In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8703

MORTON SALT COMPANY,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

Petition for Review of Order of the Federal Trade Commission.

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ABNER LICHTENSTEIN, was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

1347 *Direct Examination by Mr. Haslett.*

Q. Mr. Lichtenstein, will you give your full name?
A. Abner Lichtenstein.
Q. And you reside in Atlanta, Georgia?
A. Yes, sir.
Q. And in what business are you engaged, sir?
A. Wholesale groceries.
Q. And with what company are you connected, sir?
A. Lichtenstein Company, Inc.
Q. You say it is a corporation, sir?
A. Yes, sir.
Q. Incorporated under the laws of what state, sir?
A. The state of Georgia, Fulton County.
Q. And what is the business of the E. Lichtenstein & Company, sir?
A. Wholesale groceries.
Q. And they sell groceries and allied products to the retailer stores?
A. Yes, sir.
Q. What position do you hold with the company, sir?
A. President of the company.
Q. And how long have you been president of the company?
A. Around ten years.
Q. Ten years?
1348 A. Yes, more or less. It might be nine or it might be eleven, I don't remember.
Q. What territory does your company market its produce in?
A. I would say the wholesale market area of Atlanta. That would be the small towns surrounding Greater Atlanta.
Q. Do you go, would you say, within a radius of—put it in mileage, will you?
A. North as far as Gainesville, and south as far as Griffin, and to the west, we go to Hogansville.
Q. And to the east?
A. And to the east, we don't go so far east.

Q. Do you go as far as Macon?
A. No, we stop at Griffin.
Q. Have you any competitors at all, sir?
A. Oh, yes.
Q. Would you name some of your competitors?
A. Well, some who testified here, Lanier Brothers, Paradies & Rich, H. L. Singer Company, Alterman Brothers, and then we compete with lots of country jobbers where our salesmen work outside of Atlanta.
Q. Up until the time that C. D. Kenny Company discontinued operations in Atlanta, were they a competitor of yours?
A. Yes, sir.

1349 Q. And how about Timberlake Grocery Company, do you encounter the competition of that firm in any territory where you market your products?
A. Unless they work Griffin, I don't know whether they do or not. I never asked my salesman in that territory.
Q. Do you encounter the competition of Thomas & Howard in any territory?
A. I think they work Gainesville.
Q. Gainesville, Georgia?
A. I am quite sure, but not 100 per cent sure.
Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it make any purchases from the respondent, Morton Salt Company?
A. Yes.
Q. And does it also purchase from other processors of salt?
A. Yes, sir.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. Well, about the only thing we purchase regularly is that round carton free running and iodized salt.
Q. That is, their blue label salt?
A. Yes, sir.
Q. Do you know approximately the number of cases your company purchased in 1940 of that particular type of salt?

1350 A. I believe we bought 715 cases in 1940.
Q. And how many in 1941, if you know, sir?
A. 970 cases in 1941.
Q. How are your orders placed with the Morton Salt Company for your requirements?

A. Well, here is a purchase order signed "Morton Salt Company, by J. E. Campbell," that is the Morton representative. Here is another one signed J. E. Campbell; I think Mr. Campbell gets our orders.

Q. Is he a representative of the Morton Salt Company?

A. Yes.

Q. And he calls upon you and solicits your business, as a result of which commodities are shipped to you by the Morton Salt Company?

A. Right.

Q. Do they come in carload lots or less than carload lots?

A. They come in pool cars to the broker.

Q. To the broker, and do you haul it from the broker to your warehouse?

A. Yes.

Q. In your own trucks?

A. Yes, sir, I think so.

Q. Do you know whether or not Morton Salt Company allows you any compensation for the hauling of the products from the broker to your warehouse?

A. No, they do not do that. One time we ordered a
1351 shipment to Columbus, and they sent it to Atlanta by mistake, and allowed us some cartage, but that was exceptional, that was just a mistake, as I recall it.

Q. Do you know how much you pay for the Morton round package blue label free running and iodized salt per case?

A. $1.50 per case.

Q. And has that price been in effect for a long time, sir?

A. As far back as I can remember; at least, it has been a long time ago, yes.

Q. Does your company receive any discounts or allowances from the Morton Salt Company upon its purchases of the round package free running and iodized salt?

A. No, it is sold net, f. o. b. Atlanta.

Q. You don't receive any discount on those purchases at all, sir?

A. No, sir.

Q. What is the price that your company resells Morton's round package free running salt per case for to its customers?

A. Well, we have a cash and carry price of $1.60. Now, our salesmen have authority to meet competition according to the territory they work. For instance, a man that goes

to Gainesville would price it according to the competitive situation there.

Q. And what do you mean by meeting competition?

1352 A. Well, if he has a customer that buys his entire order from him, he wouldn't want to be undersold on a staple item like Morton salt. If a competitor undersold him, he would probably meet it, he wouldn't want a good customer to think we were out of line, you see.

Q. Where some other competitor of yours quotes a lower price, you authorize your salesmen to meet that lower price?

A. Yes, he has authority to meet it. If it is not a customer that buys other goods and the price is lower than we can afford to sell it, he just passes it up.

Q. I see.

A. But if it is a customer that buys everything, he would say, "Well, you give me the order and I will meet the Morton salt price," or whatever it was under our price.

Q. You say you operate a cash and carry price, too?

A. Yes, sir.

Q. And you said that was $1.60?

A. That is right.

Q. Is that where your customers come to your warehouse and get it in their own vehicle or conveyance?

A. Yes, and pay cash for it.

Q. And pay cash for it?

A. Yes, sir.

Q. No credit or no transportation charges are connected with the price?

1353 A. No.

Q. Have you any customers that buy on a credit basis and have the goods shipped to them through your own trucks?

A. Oh, yes, sir.

Q. What is the price you charge those customers?

A. Well, I just explained that price setup there, that it varies quite a bit, depending on what territory the salesman is working.

Q. I see, sir.

A. In the city it is $1.65.

Q. $1.65 in the city?

A. Yes, but in the country points, it is somewhat flexible.

Q. You say you do not receive any discounts upon your purchases of Morton's round package free running salt?

A. [illegible], sir.

Q. Did you know such a discount was in effect?

A. No, I didn't know it. I heard a vague rumor to that effect once. I didn't know for sure whether it was right or not, though.

Q. You didn't know that the Morton Salt Company granted discounts upon purchases of Morton's round package free running and iodized salt, based upon a quantity purchase of 5,000 cases during a 12 consecutive months' period?

A. No, I can't say that I knew it.

Q. Is the price at which your company pays for
1354 its requirements of salt an important factor in its business?

A. Yes.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price at which it sells its salt?

A. Yes.

Q. Would your business be affected by the fact that a competitor of yours sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price that you were offering to sell Morton's blue package salt for?

A. Well, if they sold everything at 2-cents less, it would hurt our business, and of course, any one thing would have a tendency that way.

Q. Well, in connection with your salt business?

A. Oh, I see.

Q. Your salt business only.

A. As regards to salt, I see. Yes, I think that anybody that undersold us 2-cents would get most of the business.

Q. You would either have to meet it or lose the business?

A. We have lots of customers that shop around on prices. They don't give us all the business automatically. If somebody undersells us on a staple item like Morton's salt, they would probably give the other man the business.

Q. So, a 2-cent differential in price under your
1355 price would affect your business?

A. Yes, it would affect it some.

Q. Is your business affected by the fact that some of your competitors pay $1.40 a case for Morton's free run-

ning and iodized salt, while at the same time you pay $1.50 for the same type of salt?

Mr. McBride: I object to that, if the Examiner please.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: Well now, am I supposed to know that they pay $1.40? As far as I know, they don't. You are asking me if they pay $1.40?

By Mr. Haslett:

Q. That is right, sir.

A. Well, would it affect my business?

Q. That is right, sir.

A. Well, it would cost me some Morton salt business.

Q. It would affect your business in the sale of that particular item?

A. Yes.

Q. Does your company do any specialty missionary work in connection with the resale of Morton's salt for the Morton Salt Company?

A. No, we have run it on a particular item, but 1356 we never did just missionary work. The salesmen carry a bulletin with different items in it.

Q. And sometimes you advertise Morton's salt in that bulletin?

A. Yes, sir.

Q. Does Morton Salt Company pay you for that advertising?

A. No, sir.

Q. It is done without even their permission or consent?

A. We don't consult them about it one way or another. They don't object, and we don't ask them; we just do it.

Q. You do it to promote your own sales?

A. Just in the sale of our goods.

Q. Have you some of those invoices with you, sir?

A. Yes.

Mr. Haslett: It is stipulated by and between counsel representing respondent herein, and counsel for the Commission, that invoices similar to and identical with Commission's exhibit No. 52, except as to the quantity of the product, date, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company, and E. Lichtenstein, Inc., of Atlanta, Georgia, who is a customer of Morton Salt Company, and that said Commission's exhibit No. 52 is typical of such invoices

for the sale of salt of the same type that appears thereon, that passed between the respondent herein and its
1357 customer, E. Lichtenstein Company, Inc., of Atlanta, Georgia, and that such invoices have in the regular course of the respondent's business passed between the respondent and its said customer, E. Lichtenstein Company, Inc., of Atlanta, Georgia, after respondent began the sale of, and the said customer, E. Lichtenstein Company of Atlanta, Georgia, began the purchase of the type of products as appear on Commission's exhibit No. 52.

Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. Does your company operate any branches other than the one warehouse?

A. No, we don't have a branch, but I happen to have two other houses affiliated, and they are separate corporations, but under my management.

Q. What are the names of those?

A. One at Columbus, and one at LaGrange.

Q. One at Columbus, and one at LaGrange?

A. Yes, sir.

Q. And they are in the wholesale grocery business?

A. Yes.

Q. And operate under your supervision?

A. That is right.

Q. And are they corporations?

A. Yes, sir.

1358 Q. And incorporated under the laws of the state of Georgia?

A. Right.

Q. What are the names of those two companies?

A. In Columbus it is called Muskogee Wholesale Grocers, Inc., and in LaGrange it is Streamlined Wholesalers, Inc.

Q. Do you sell Morton's round package salt through those stores?

A. I don't know if we do in LaGrange, but we do in Columbus.

Q. You do in Columbus?

A. Yes, sir.

Q. And it is sold in the same manner as your business operated here in Atlanta, under the name of E. Lichtenstein Company, Inc.?

A. Yes, the same way, the same price, $1.60.

Q. And you pay the same price, $1.50 for it, sir?
A. Delivered, yes, f. o. b. Columbus.
Q. Do you have competitors in Columbus?
A. Yes.
Q. Do you know the names of any of those competitors?
A. Sol Loeb Company, and we have C. D. Kenny Company right next door to us down there, and Key-Townsend, those are the main ones there.
Q. Are all of the purchases done for the Colum-
1359 bus and LaGrange branches in Atlanta?
A. That is right.
Q. You don't receive any discount upon your purchases of Morton salt for the Columbus branch?
A. No.
Q. You are paying $1.50 a case for it at Columbus?
A. $1.50 at Columbus in pool cars.
Q. In pool cars?
A. That is right.
Q. And is the car put on your siding or some one of your competitor's siding?
A. I think the car is shipped to Dan Joseph & Company, and distributed by them. I believe they are their brokers down there.
Q. Do you haul it from their siding?
A. Yes, we pick it up over there.
Q. And take it to your warehouse?
A. Yes.
Q. For which you receive no compensation from the Morton Salt Company?
A. No.
Q. You resell that salt in Columbus in competition with C. D. Kenny at $1.60 per case?
A. Yes, that is right.
Q. Would your business be in any way affected if
1360 Kenny offered that salt at $1.58 a case, while at the same time you were selling it at $1.60 case?
A. Yes, it would affect us, there particularly. Kenny is very active down there.
Q. And what effect would it have on your business if C. D. Kenny was purchasing that salt at $1.40 a case, while at the same time you were paying $1.50 for it, sir?
Mr. McBride: My usual objection, Mr. Examiner.
Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: Well, my opinion is it would create a tendency for Kenny to get most of the Morton salt business there.

By Mr. Haslett:

Q. Are the books and records of the corporation operated under your supervision in Columbus, kept in Atlanta?

A. No, all of the invoices and payments, and so on, are out of this office.

Q. Are out of this office?

A. Yes, our office in Atlanta.

Q. The figures that you gave showing the total number of cases of Morton's free running and iodized salt purchased by your company in 1940 and 1941, did they also represent the combined purchases of the other two companies with it, with your Atlanta company's?

1361 A. Well, those things are mixed up, I can't untangle them. We had a man in Columbus, who is not with us anymore, and I don't know what happened. I can't answer. I don't know where he is. They said he had a disagreement with their broker down there, and the broker wouldn't sell him direct, so we bought it in Atlanta and transferred it for a while.

Then, after this man left, we started buying delivered Columbus down there, so part of these figures I gave you went to Columbus, but I don't know how much.

Q. You say that one of your men, who is not now in your employ, had a disagreement with the broker of the Morton Salt Company?

A. I can't say he did. All I can tell you is that is what he told me.

Mr. Haslett: I think that is all, Mr. McBride. Your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Lichtenstein, do you have any recollection, or can you estimate the number of cases of Morton's blue package which your company purchased prior to 1940, for, say, the years 1937, 1938 and 1939?

A. No, I wouldn't remember that. In fact, I didn't know these figures until I checked them up.

Q. For the two years you specified, 1940 and 1941?

1362 A. Yes, I just went to the paid invoice file and

added up what invoices I found there. It would be pretty hard for me to guess now.

Q. Now, do I assume correctly from your testimony, also, that you are not in a position to testify as to the volume of Morton's blue can distributed through your Columbus corporation, is that correct?

A. No, for a while, we were buying it here and transferring it down there, you see, and I don't know what part was sold in Columbus. I have no way of knowing that.

Q. That would be true, even as to 1940 and 1941?

A. That is right.

Q. I believe you stated that your cash and carry price here in Atlanta was $1.60 per case?

A. That is right.

Q. And how long has that been in effect, if you can recall?

A. Well, it has been in effect a long time, but I couldn't say exactly when.

Q. Several years?

A. Probably so, yes, I imagine so.

Q. And would that also be true with respect to your cash and carry price at your Columbus house?

A. Yes, I think so.

Q. I think you stated that was $1.60 there for cash and carry?

1363 A. I think for a while they sold that for less than that.

Q. I see.

A. For two or three cents less. They did have a price of $1.58 once.

Q. But, currently, it is $1.60?

A. Now it is $1.60, but they did have a price once of $1.58.

Q. Now, do you know at what price C. D. Kenny offers Morton's salt at Columbus per case on the blue label?

A. No, I don't know.

Q. You wouldn't know whether their price was $1.60 or $1.62 or $1.58, of your own knowledge, is that right, just of your own knowledge?

A. No, I wouldn't know any price of any competitors of my own knowledge. I don't work the trade or ask them the prices. I get reports from the salesmen as to what is going on in the territory. That is the only way I know. I wouldn't know any competitive price of my own knowledge.

Q. Have you had any reports with respect to C. D. Kenny's price in Columbus, from your salesman?

A. No.

Q. Now, with respect to Atlanta, Mr. Lichtenstein, do you know of anybody in Atlanta who is selling cash and carry Morton's blue label per case at $1.58 at the present time?

A. No, I don't know of anyone that is, I wouldn't
1364 know one way or the other.

Q. And that would be true with respect to the past several years as well, is that right, you wouldn't know whether they were or were not?

A. Well, to answer that question more exactly, from time to time I do review different items of merchandise with the salesmen, or with our Columbus people, and discuss our price setup on it, and I am sure I have done it with respect to Morton's salt at various times, but we handle something like three or four thousand items, and I couldn't recall now what we talked about, say, three or four months ago, and if we reviewed this price on Morton's salt, I wouldn't remember now what we said.

Q. You probably have reviewed, but you don't recall specifically as to what the competitive picture?

A. Yes, I am sure I have reviewed it.

Mr. McBride: I think that is all, Mr. Lichtenstein.

Redirect Examination by Mr. Haslett.

Q. Mr. Lichtenstein, just a couple more questions, sir.

A. All right, sir.

Q. I believe you stated at one time you sold salt in the Columbus area at $1.58 a case?

A. Yes.

Q. Why did you do that, sir?

1365 A. That was on the recommendation of the manager that was with us at that time, and I just accepted his price without discussing it with him.

Q. You don't know what his reason for offering the recommendation was?

A. No, but he did price Morton's salt at one time at $1.58 down there, and I think the reason was—the reason that sticks in my memory, I believe one of our competitors said we were selling it too cheap and didn't like it, and he

beefed to somebody, and it got back to me in an indirect way.

Q. Mr. Lichtenstein, I didn't quite get the significance of your answer to my last question, so I will reframe it and ask you what the reason was that your company began the sale of Morton's salt at $1.58 in Columbus, Georgia?

A. There were some sales made at $1.58, I don't know why.

Q. You don't know the reason, sir?

A. No, sir, I would have to guess. I might be able to make a pretty good guess, but I wouldn't say I know.

Q. Well, we don't want any guessing on the record, sir.

A. All right.

Q. Now, Mr. Lichtenstein, at the time that the local manager of your branch in Columbus, Georgia, had this difficulty with the broker for the Morton Salt Company, did you place orders for the round package free running salt direct with the Morton Salt Company's repre-
1366 sentative here in Atlanta for Columbus' requirements.

A. No, we didn't work it that way.

Q. How was it worked, sir?

A. We just simply bought Morton's salt for our Atlanta office, and we didn't say what we were going to do with it, and put it in our stock and then transferred it to Columbus.

Q. Did you transfer it with your own trucks from Atlanta to Columbus?

A. Yes, sir.

Q. And you bore the cost of transportation from Atlanta to Columbus, is that correct, sir?

A. I believe we did, all except once, and that was due to a mix-up, and they finally said they made a mistake and gave us an adjustment.

Q. They gave you an adjustment for one shipment of salt from Atlanta to Columbus, Georgia?

A. Yes, I think that was only one time that that happened. We insisted on them shipping to Columbus, and they said, "All right," and shipped it to Atlanta by mistake. So, they said it was their error, and made some adjustment of a small amount.

Q. Other than the time that you just mentioned, the cost of transporting that round package salt from Atlanta to Columbus was borne by your company?

A. Yes, sir.

1367 Mr. Haslett: I think that is all.

Mr. McBride: I have no further questions.

Mr. Haslett: Thank you very much, Mr. Lichtenstein.

(Witness excused.)

Mr. Haslett: I will call as my next witness Mr. Deadwyler.

W. W. DEADWYLER was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Deadwyler?

A. William Whitfield Deadwyler.

Q. And do you reside in Atlanta, Georgia?

A. Yes, sir.

Q. And in what business are you engaged, sir?

A. Retail grocery chain.

Q. And with what company are you connected?

A. Piggly Wiggly branch, operated by the Kroger Grocery & Baking Company.

Q. And where is the main office of the Kroger Grocery & Baking Company located, sir?

A. Cincinnati, Ohio.

1368 Q. And you say you are with the Piggly Wiggly branch of that company?

A. Well, there is a Kroger branch here, but we operate the Piggly Wiggly Stores.

Q. And what are the Piggly Wiggly Stores?

A. They are chain grocery stores.

Q. Selling groceries and allied products to the consuming public?

A. Yes.

Q. And how many such stores does your company operate in this area?

A. Thirty-nine.

Q. Thirty-nine?

A. Yes.

Q. And could you state geographically what territory they cover, sir?

A. Well, we go north to Rome, Georgia, southwest to LaGrange—I guess that is southwest.

Q. How about west, sir?

A. We don't have any west.

Q. Do you have any east?

A. We have Cedartown, that would be north, and Noonan, Georgia.

Q. Do you operate in Macon, Georgia?

A. No, sir.

1369 Q. Do you operate any Piggly Wiggly Stores outside of the state of Georgia from this particular branch?

A. No, sir.

Q. All are within the state of Georgia?

A. Yes.

Q. But the principal office and place of business of your company is located in Cincinnati, Ohio?

A. Yes, sir.

Q. And the Kroger Grocery & Baking Company, is it a corporation?

A. I can't truthfully tell you whether it is or not.

Q. You don't know?

A. No, sir.

Q. Has your company any competitors in this area?

A. Yes, the A&P Tea Company, the Rogers Stores, they operate the Big Star Markets, they are our chief competitors so far as the same type of business, super markets and cash and carry.

Q. How about Alterman Brothers, the Big Apple Stores?

A. That is a competitor, too.

Q. In addition to these, you also have independently owned retail stores?

A. Yes.

Q. Numbers of them?

A. Yes.

1370 Q. In all areas where you market your products?

A. Yes, they are all competitors.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. And does it purchase from the Morton Salt Company?

A. Yes, sir.

Q. Does it also purchase from other processors of salt?

A. Yes.

Q. What type of salt is purchased by your company from the Morton Salt Company?

A. Their round carton, 26 ounce package.

Q. Oh, by the way, Mr. Deadwyler, what position do you hold with the company?

A. Purchasing agent, groceries.

Q. Here in Atlanta?

A. Yes, sir.

Q. How long have you been purchasing agent?

A. Well, Kroger has operated this branch for about seven years. I have been with Kroger the full seven years.

Q. The full seven years?

A. Yes, sir.

Q. And you have been here in Atlanta seven years?

A. Well, it was also formerly operated by Winn & Lovett Grocery Company for six years, and I was purchasing agent for them, also.

1371 Q. You were with Winn & Lovett prior to the time you went with Kroger?

A. Yes, and before that, with Southern Food Stores, in Miami, Florida, I was with them in Miami, Florida.

Q. You say you purchase salt from the Morton Salt Company?

A. Yes.

Q. What type of salt do you purchase from the Morton Salt Company?

A. Their round carton, 26 ounce.

Q. Is that the blue package salt?

A. Yes.

Q. How are orders placed by your company with the Morton Salt Company for its requirements?

A. With their salesman or their broker.

Q. Here in Atlanta, sir?

A. Yes, sir.

Q. As a result of which, commodities are shipped to you by the Morton Salt Company?

A. Yes, sir.

Q. Are they shipped on carload basis?

A. No, sir, pool cars.

Q. And is the pool car put on your siding?

A. No, it goes to their broker.

Q. And does your company haul the products from the broker to its warehouse?

1372 A. Yes, sir.

Q. In its own operated vehicles?

A. Our own trucks, yes.

Q. Do you know the price that your company is now paying for Morton's round package blue label free running and iodized salt?

A. Yes, sir.

Q. What is that price?

A. $1.50 a case.

Q. $1.50 a case?

A. Yes, sir.

Q. Has that price been in effect for a long time?

A. According to this company contract, since June 1, 1939.

Q. And it might have been in effect prior to the time of this contract?

A. I wouldn't have any record on it.

Q. The contract runs from June 1, 1939, is that it?

A. The price is still in effect since June 1, 1939.

Trial Examiner Purcell: Contract between whom?

The Witness: Kroger.

Trial Examiner Purcell: Kroger with whom?

The Witness: Morton Salt Company.

By Mr. Haslett:

Q. Your company entered into a contract with Morton Salt Company?

1373 A. I would suppose so, every branch gets one of those.

Q. And that is handled—

A. That is our instructions, to pay that amount.

Q. And that is handled by the Kroger Grocery & Baking Company's general office in Cincinnati, Ohio?

A. Yes, sir.

Mr. McBride: If the Examiner please, I believe I must at this juncture ask that the witness' statement that there is a contract between Kroger and Morton Salt Company be stricken, in view of his subsequent testimony, particularly in view of the additional objection that if there is such a contract, it must speak for itself. I have no objection to any of the other testimony. I am directing it simply to the contract evidence.

Trial Examiner Purcell: I understand your position.

Mr. Haslett: It is true that the contract does speak for

itself, but I think I can examine this witness as to the relationship between his company and the Morton Salt Company, and if the contract does develop in accordance with that testimony, I am not bound to put the contract in evidence.

Trial Examiner Purcell: Well, subject to proper proof, I am going to sustain the objection.

By Mr. Haslett:

Q. Your company is now purchasing from the Morton Salt Company, its round package blue label free run-
1374 ning and iodized salt?

A. Yes, sir.

Q. And pays $1.50 per case for it, sir?

A. That is what I pay here, yes.

Q. And that has been in effect since June, 1939?

A. Yes.

Q. Do you know approximately the number of cases that the Kroger Grocery & Baking Company's branch at Atlanta has purchased in the year 1940 from the Morton Salt Company of its round package blue label free running and iodized salt?

A. Yes, 1,715 cases.

Q. And do you know the figure for the 1941 purchases?

A. 1,630 cases.

Q. Do you know the dollar volume of business placed by your company from its branch at Atlanta, by the Morton Salt Company, for the year 1940?

A. Yes, $2,572.50.

Q. And do you know the dollar volume of business for the year 1941?

A. $2,445.

Q. That is the total purchases of all types of salt from the Morton Salt Company by the Atlanta branch of the Kroger Grocery & Baking Company?

A. Yes.

Q. For the years 1940 and 1941?

1375 A. Yes, sir.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. Not to my knowledge.

Q. Do you get any discounts on your purchases?

A. No, sir.

Q. You pay $1.50 for it?

A. Yes, sir.

Q. What is the price at which your company resells its products through its wholly owned retailer stores direct to the consuming public?

A. Seven-cents per package.

Q. Seven-cents per package?

A. Yes, sir.

Q. And has that price been in effect for a long time, sir?

A. No, sir, last year we sold it for 8-cents.

Q. Last year?

A. Yes, sir.

Q. When did the price change, if you know, sir?

A. As we opened the big super stores.

Q. You lowered the price to 7-cents?

A. Yes.

Q. And that is the price in effect at the present time?

A. In the big stores, yes.

Q. And now, when you say "big stores," you must
1376 mean that you have some little stores?

A. Yes, sir.

Q. How many big stores do you operate, sir?

A. Well, that is a little confusing there, I mean, as far as the width and depth of the stores is concerned. I am talking about the over-all volume.

Q. Well, do you have any designation for your various type stores?

A. We generally refer to them with parking lots, as the big type super stores.

Q. The big type superstores?

A. Yes, sir.

Q. Now, describe that, what is that, sir?

A. Well, it has larger fixtures, carries more stock, and has a parking lot for customers. That is just the difference.

Q. Then, do you have a smaller type super store?

A. Yes, sir.

Q. Will you describe that, please, sir?

A. Well, they are just the opposite from the big one.

Q. Do they have the parking lot?

A. They do not have a parking lot, other than the curbstone.

Q. Well, is the price of 7-cents a package for the Mor-

ton's round package salt the same in the big stores as it is in the little stores?

1377 A. No, sir.

Q. What is the price in the smaller stores?

A. It is 8-cents in the smaller stores, and 7-cents in the super stores.

Q. You don't of your own knowledge, know whether your company in its main office at Cincinnati, receives any discounts from the Morton Salt Company upon the purchases of the Kroger Grocery & Baking Company's branch at Atlanta?

A. No, sir.

Q. You don't get any of that?

A. No, sir.

Q. Does your company, through its wholly owned retail stores, do any promotional work in connection with the sale of Morton's products?

A. None out of the ordinary, no, sir.

Q. Just the same promotional work you do for any other product?

A. Yes, sir.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Yes, sir.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price that it sells its product?

A. Yes, sir.

1378 Q. If one of your competitors sold Morton's round package blue label salt at 6-cents a package, while at the same time you were selling it at 7-cents a package in your super market, would that in any way affect your business?

A. We would have to meet that price, which would mean that we would lose 2-cents per case.

Q. You mean, 2-cents per package?

A. We would lose 2-cents per case actually in cost from our cost of $1.50. No, I was wrong on that figure. It would be 6-cents.

Q. You mean, you would lose 6-cents a case if you sold at 6-cents retail?

A. Yes, sir.

Q. Because that would figure $1.44 a case?

A. Yes, sir.

Q. And you are paying $1.50 a case for it, as far as you know?

A. Yes, sir.

Q. What effect would it have upon your business if one of your competitors was purchasing Morton's round package blue label free running and iodized salt at $1.35 a case, while at the same time you were paying $1.50 a case for it, sir?

Mr. McBride: I object to that question for my usual reasons.

Trial Examiner Purcell: Objection overruled. You 1379 may answer.

The Witness: Well, if he reduced his retail price, I would have to meet it, which would cause me to lose money.

By Mr. Haslett:

Q. I see, but you stated the price at which your company pays for its requirements is an important factor in your business?

A. Yes.

Q. Then, if a competitor of yours was purchasing at $1.35 a case, while at the same time you were paying $1.50 a case for the products of the same type, would that in any way affect your business?

Mr. McBride: Same objection.

Trial Examiner Purcell: Same ruling. You may answer.

The Witness: Yes, we would have 15-cents a case less profit.

By Mr. Haslett:

Q. Do you handle any other type of salt other than the round package salt?

A. Not of Morton's, no, sir.

Q. That is the only type of product that you purchase from the Morton Salt Company?

A. Yes, sir.

Q. Have you any invoices with you?

1380 A. No, sir.

Mr. Haslett: I think that is all, Mr. Examiner. Your witness, Mr. Examiner.

Cross-Examination by Mr. McBride.

Q. Do I understand that your company operates a warehouse here in Atlanta?
A. Yes, sir.
Q. And out of that warehouse, you service your company's stores throughout the territory that you described?
A. Yes, sir.
Q. And in servicing those stores, you distribute the commodities at your warehouse by your own trucks and at your own expense to those stores?
A. Yes, sir.
Q. Do you know of anyone in Atlanta who is selling Morton's blue package for 6-cents per package?
A. No, sir.
Q. In your office staff here in Atlanta, you are the buyer, as I understand it?
A. Yes, sir.
Q. And do you have a sales manager here in Atlanta?
A. Yes, sir.
Q. That sales manager is in charge of the Piggly Wiggly Stores operating out of this warehouse?
1381 A. That is the branch manager, he is the head operator, and then the sales manager is under the branch manager.
Q. Oh, there is a branch manager who controls the policies of the entire Piggly Wiggly group in this area?
A. Yes, sir.
Q. Then you are the buyer under that branch manager?
A. Yes, sir.
Q. Then there is a sales manager under that branch manager?
A. Yes, sir.
Q. Now does the branch manager or the sales manager determine the price at which the commodities warehoused through Atlanta will be sold in the Piggly Wiggly Stores?
A. I determine the retail price.
Q. You determine the retail price?
A. Yes, sir.
Q. And that is true of Morton's blue package salt?
A. Yes, sir.
Q. So that you buy the commodities and also price them, as well? You set the price?
A. Yes, sir.

Q. And in making that price, as I understand it, for retail purposes, you take into consideration the cost that you have here in Atlanta?

A. Yes.

1382 Q. In the large super stores, and also in the small super stores, if I may use the distinction, distinguishing between the parking lot and non-parking lot group that you described, are all of those cash and carry self-service stores?

A. Yes, sir.

Q. Do you know anybody in Atlanta who is purchasing salt, Morton's blue package salt at $1.35 per case?

A. No, sir.

Mr. McBride: I believe that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. I believe you stated you were in competition with the A & P Tea Company?

A. Yes, sir.

Mr. Haslett: I think that is all, thank you, Mr. Deadwyler.

(Witness excused.)

Trial Examiner Purcell: Do you have another witness?

Mr. Haslett: Yes, I will call Mr. Paradies.

ISAAC JACOBS PARADIES was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record,

1383 Mr. Paradies?

A. Isaac Jacob Paradies.

Q. And where do you reside, Mr. Paradies?

A. 2010 Ponce de Leon Ave.

Q. And that is in the City of Atlanta?

A. Yes, that is in De Kalb County, Ga.

Q. And in what business are you engaged, sir?

A. In the Wholesale Grocery business and the Baker's supply business.

Q. How long have you been in the wholesale grocery business?

A. Thirty years.
Q. With what company are you connected?
A. Paradies and Rich.
Q. And where is that company located?
A. 66 Mangum Street.
Q. Is that in the City of Atlanta?
A. In the city of Atlanta, yes.
Q. And what is the business of Paradies and Rich?
A. Wholesale Groceries, and we sell to the retail grocers, Bakeries, Institutions, Restaurants, and Hotels.
Q. And is it a Corporation, sir?
A. No, it is a partnership.
Q. And have you an interest in the partnership?
A. Yes, sir.
Q. What interest have you?
1384 A. I am a partner in the firm.
Q. And what territory does Paradies and Rich do business in?
A. In the grocery end of it we are going as far as a radius of 75 miles. In the baker's supply business we go to about six states.
Q. In about six states?
A. Yes, sir.
Q. Does your company have any competitors in the wholesale grocery end of your business?
A. Yes, sir.
Q. Would you name some of your competitors, please?
A. H. L. Singer Company, E. Lichtenstein, Alterman Brothers, Lanier Products.
Q. And does your company encounter the competition of Thomas & Howard in any area where it markets it products?
A. Not that I know of.
Q. Up until about a year ago, did you have as a competitor in the Atlanta area, C. D. Kenny Company?
A. Yes, sir.
Q. Do you encounter the competition of the Timberlake Grocery Company in any area served by you?
A. Not that I know of.
Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it make any purchases of salt from the Morton Salt Company?
1385 A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Packaged salt, 26 ounce blue label salt.

Q. That is the blue packaged salt?

A. The blue package, yes, sir.

Q. Both free-running and iodized?

A. Both free-running and iodized.

Q. Is that the only type of salt your company purchases from the Morton Salt Company?

A. Practically. We occasionally buy some bulk salt, but very seldom.

Q. How are orders placed by your company with the Morton Salt Company for its requirements?

A. Mr. Campbell, their representative, most of the time he is there, or somebody contacts us by telephone, and we buy the salt or the broker is there.

Q. One of the representatives of the Morton Salt Company calls upon you and solicits your orders?

A. Solicits our orders, yes.

Q. As a result of which, commodities are shipped to you by the Morton Salt Company?

A. Yes, sir.

Q. Do you purchase on a carload basis?

1386 A. No, we get it in pool cars.

Q. And do the pool cars come to your siding?

A. No.

Q. Where are they located, sir?

A. They are located at Loeb Apte Company, Brokers.

Q. And does your company haul the commodities from the broker to your warehouse?

A. Yes, sir.

Q. And do you know the price at which your company pays the Morton Salt Company for its round package, blue label free running and iodized salt, per case?

A. $1.50.

Q. $1.50 per case?

A. Yes.

Q. And has that price been in effect for a long time?

A. I believe so.

Q. Is that price in effect at the present time?

A. Yes, sir.

Q. What is the resale price that your company charges for Morton's round package, blue label, free running and iodized salt per case?

A. We have from $1.59½ to $1.70, depending on the locality and the mileage that we would have to deliver, and also between the credit and cash basis.

Q. So the difference between the low price of
1387 $1.59½ and the high price of $1.70, is due to transportation charges and credit ratings?

A. Yes, sir.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. No, sir.

Q. Approximately how many cases of Morton's round package free running salt does your company purchase a year?

A. Around 700 cases.

Q. Do you know about how many cases it purchased in 1940?

A. I have the figures here. Around $1000.00 worth; around 650 cases.

Q. And in 1941?

A. Practically the same.

Q. Practically the same?

A. Yes.

Q. Around 650 or 700 cases a year?

A. That is right.

Q. I believe that you stated that your company does not receive any discount or allowance from the Morton Salt Company?

A. No, sir.

Q. On any of its purchases?

A. No, sir.

Q. Is the price which your company pays for its
1388 requirements of salt an important factor in your business?

A. Yes, sir.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price your company sells its salt products for?

A. Yes.

Q. Would your business be affected by the fact that a competitor of your company sold Morton's round package blue label salt to your customers at a 2-cent differential in price under the price that you were charging for it, sir?

A. Yes, sir.

Q. And is your business affected by the fact that some of your competitors pay $1.40 a case for Morton's free running and iodized salt, while at the same time you pay $1.50 for salt of the same grade, quality and size?

Mr. McBride: My usual objection.

Trial Examiner Purcell: Objection overruled.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Does your company purchase any flat salt from the Morton Salt Company?

A. No, sir.

Q. Just the blue label salt?

A. Yes.

Q. How long has your company been purchasing
1389 from the Morton Salt Company?

A. Oh, a long time.

Q. A number of years?

A. A number of years. We have never made a dime on it. We have never made money on this kind of salt, or anything. That is what we call loss leaders, because we sell at $1.60 and $1.59½, and we probably deliver, and that is about 6½ per cent. It is one of these things that we don't make our overhead on, the same as milk, or some other stuff, and C. D. Kenny was one of the causes that we had been selling milk at 2 per cent or 3 per cent, just one of the reasons why we did it. We just have it as a loss leader. We have to keep it.

Mr. McBride: Now, if the Examiner please, I will ask that the answer be stricken as not responsive to the question, referring now to the whole answer other than the first sentence about buying for several years.

Mr. Haslett: I don't mind him striking the portion of the answer that refers to milk, because we are not interested in milk in this proceeding. I think the other part of the answer is responsive to the question.

Mr. McBride: It hasn't anything to do with the question as to how long he has purchased.

Trial Examiner Purcell: I know the position of both sides, and I am ready to rule.

1390 Let me have the answer, Mr. Reporter.

(The answer referred to was read by the reporter.)

Trial Examiner Purcell: After the answer, "A number of years", strike out all from there on.

Mr. Haslett: I assume that the Examiner means that the motion to strike is granted of respondent's counsel, but not physically from the record?

Trial Examiner Purcell: That is correct. Let it stay in the record, but I rule out all after the words "for a number of years", for the reason that it is not responsive to the question. It goes quite far afield, and of course you understand that you are not precluded from bringing out his statement of facts, if they be facts, by other questions along the same line. You understand what I mean, Mr. Haslett?

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. Did you know, Mr. Paradies, prior to the hearing here today that the Morton Salt Company gave a 10-cent discount on Morton's free running and iodized salt?

A. No, sir.

Q. You didn't know that, sir?

A. No, sir.

Q. You had never been advised by any of their 1391 representatives that such a discount schedule was in effect?

A. Not that I know of.

Q. Do you feel that any of your competitors who receive such a discount are placed in a favorable position?

Mr. McBride: I object to that question.

Mr. Haslett: I can't see anything wrong with that question.

Trial Examiner Purcell: What are your grounds for objection, Mr. McBride?

Mr. McBride: Simply this, that it assumes an awful lot, "a favorable position". The question certainly is an implication of relativity between this man's business and somebody else's business. I don't know, I haven't any idea what "favorable position" means in this man's mind, or anybody else's.

Mr. Haslett: Counsel, this morning, used the same term. He knew what it meant then.

Trial Examiner Purcell: No personalities, please, gentlemen. I think the question answers itself. Objection overruled.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Did you bring any invoices with you, sir?

A. Yes, sir.

Mr. Haslett: It is stipulated between counsel rep-
1392 resenting the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's Exhibit No. 52, except as to the quantity of the product, date, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company, and Paradies & Rich, Atlanta, Georgia, who is a customer of the respondent, Morton Salt Company, and that said Commission's Exhibit No. 52 is typical of such invoices for the sale of salt that appears thereon that passed between the respondent herein and the customer Paradies & Rich, of Atlanta, Georgia, and that such invoices have in the regular course of the respondent's business passed between the respondent and its said customer, Paradies & Rich of Atlanta, Georgia, since the respondent began the sale of and the said customer, Paradies & Rich, of Atlanta, Georgia, began the purchase of the type of products as appear on Commission's Exhibit No. 52.

Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. Mr. Paradies, does your company do any promotional missionary work in connection with the sale of Morton's salt?

A. No, sir.

Q. Do you do any advertising work for them, sir?

A. No, sir.

Q. Has your company any branches?

1393 A. We have cash and carries, two cash and carries here in the city.

Q. And are they connected with Paradies & Rich?

A. Yes, sir.

Q. Under what name are they operated, sir?

A. Cash & Carry.

Q. Cash & Carry?

A. Yes.

Q. And they are just branches of Paradies & Rich?

A. Cash & Carry branches of the main house.

Q. That is where your customers come to the warehouse and get the products and pay cash for them?

A. Yes.

Q. What is the price of Morton's round package blue label salt at the cash and carry branches, sir?

A. $1.60.

Q. $1.60?

A. Yes, sir.

Q. And has that price been in effect for a long time?

A. For several years, as long as we owned it, I believe. One of them was just established last year, see.

Q. They are wholly owned by Paradies & Rich?

A. They are wholly owned, yes.

Q. Are both of them operated within the city limits of Atlanta?

1394 A. Yes, sir.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. Mr. Paradies, I think you stated that your price range was $1.59½ up to some top price, depending on the delivery range, is that correct?

A. Yes.

Q. And that range of prices, as well as your $1.60 price, to which you just referred, has been in effect for a number of years?

A. Yes, sir.

Q. I believe you also testified that your volume of Morton's blue can purchase was about 650 to 700 cases in 1940, and about the same amount in 1941?

A. Yes, sir.

Q. Was that also true of the three or four years prior to 1940, about the same volume of purchases?

A. I haven't got the records, but I believe it is about the same.

Q. So nearly as you can recall, it went along about the same?

A. Yes, sir.

Q. Do you know of anybody, Mr. Paradies, in the territory which you serve, who sells Morton's blue pack-

1395 age salt for 2-cents less than $1.59½?

A. I don't know of any, except on bids, probably to the city, and they sell it for $1.59, also.

Q. Where you are bidding to a municipality, or something of that sort?

A. Yes, sir.

Q. Competitive bidding?

A. Competitive bidding, yes.

Q. Do you know of anybody who sells for a cent less than $1.59½? Would your answer be the same there?

A. Occasionally in the cash and carry lists, we find about $1.58, to the best of my knowledge.

Q. Where it might be a bulletin special?

A. One of their specials, yes.

Q. And that would be in effect only for a day or a week?

A. It would be in effect for about two weeks, from the 1st to the 15th.

Q. While that bulletin was effective?

A. That is right.

Q. And I understand your testimony that your volume of Morton's blue can has apparently not decreased over a number of years?

A. It hasn't increased, while all business has increased in general, but it has not increased.

Q. It has remained approximately the same?

1396 A. Yes.

Q. Now, when you make that statement, you are making that statement from your recollection without your records before you, is that right?

A. For the two years, I have the records. We have the records for the last several years, but I haven't them with me.

Q. Now, can you state, Mr. Paradies, whether or not you ever lost any salt business on Morton's blue can to any of the companies in Atlanta whom you described as competitors?

A. I believe we lost salt business to the C. D. Kenny Company, together with some other items, and for that reason we have the Diamond Salt Company, the Diamond Crystal, and we have built up a business on that.

Q. How many cases of business did you lose to C. D. Kenny Company, Mr. Paradies?

A. I would say that our business has increased about 25 per cent, the whole business. As a whole, I would feel that that would apply on salt, too, as a general average. I am not positive as to a certain amount, but we take it on a percentage basis.

Trial Examiner Purcell: Did you say it "would" apply, or "should" apply?

The Witness: It would apply.

Mr. Haslett: Mr. Examiner, I didn't quite under-
1397 stand. Did he say decrease or increase?

Trial Examiner Purcell: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

Mr. Haslett: I make the motion to strike the answer of the witness on the ground it is not responsive to the question.

Trial Examiner Purcell: I must grant that motion.

Mr. McBride: Let the reporter read the question back again, please.

(The question referred to was again read by the reporter.)

The Witness: I don't know definitely on that, I don't know definitely the amount.

By Mr. McBride:

Q. Then, will you describe how you know you lost business to C. D. Kenny Company?

A. Our business had a general increase of at least 25 per cent, and I take it that the salt should have increased on the same proportion, and since it didn't increase, that means that we have lost that business for that reason.

Q. And, therefore, you assume from that that you must have lost the entire 25 per cent lack of increase to the C. D. Kenny Company, do I understand you correctly?

A. Some of it, anyway.

1398 Q. Oh, but not all of it?

A. Not all of it.

Q. At the time the C. D. Kenny Company was doing business in Atlanta, you had other competitors besides C. D. Kenny Company, didn't you?

A. Yes.

Q. And do I understand you correctly that you feel that while your salt business did not increase in proportion to your other business, that its failure so to increase was due to C. D. Kenny's being here, and not any of the other competitors?

A. C. D. Kenny was the cause of it.

Trial Examiner Purcell: Now, Mr. McBride, I am sure you wish to be fair with the witness. He didn't say that. He said that some of it was due to C. D. Kenny Company, and your question is predicated upon the assertion of the witness that he lost all of it to C. D. Kenny Company.

Mr. McBride: I will accept the amendment.

By Mr. McBride:

Q. Mr. Paradies, can you tell me the date on which you lost some of your otherwise increased business to the C. D. Kenny Company?

A. The date that I have put on record, 1940 and 1941.

Q. Now, what particular retail customers' sales
1399 did you lose to C. D. Kenny Company on Morton's blue package salt?

A. My salesmen are the ones who reported it, that we were out of line on salt, and that is all presumption on my part. I am not definite, I can't call any names, but I am merely making the statement because we haven't increased the salt. That is the reason why. If we lost some of the salt to the competitors, it means that they met C. D. Kenny's prices on it, and that naturally the main cause would have been C. D. Kenny at the time.

Q. What was C. D. Kenny's price while they were in business in Atlanta, if you know?

A. I believe their price was $1.60. They are the ones who had this price, to the best of my recollection. I am not 100 per cent sure about it.

Mr. McBride: I believe that is all, Mr. Paradies.

Mr. Haslett: That is all, thank you, sir.

(Witness excused.)

Trial Examiner Purcell: Do you have any further witnesses?

Mr. Haslett: Yes, I will call as my next witness Mr. Ashby Cameron, of the Morton Salt Company.

Trial Examiner Purcell: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: All right, recess is over.

1400 Mr. McBride: Mr. Examiner, I make my usual request at this time for permission to withdraw Commission's exhibits numbers 111 to 114-D, inclusive, to be photostated, and the originals thereafter returned to the record.

Trial Examiner Purcell: Granted.

Mr. Haslett: I will call as the next witness Mr. Ashby Cameron of the Morton Salt Company.

Trial Examiner Purcell: Let the record show that Mr. Cameron has heretofore been on the stand as a witness for the Commission and has been sworn as such.

ASHBY CAMERON was thereupon recalled as a witness for the Commission, having been previously duly sworn, and testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Cameron, is the sale of salt packaged under the blue label by the Morton Salt Company in the state of Georgia under your general supervision?

A. Yes, sir.

Q. And do you have a state supervisor who has charge of the solicitation and the sales of round package salt and other types of commodities packaged by the Morton Salt Company in Georgia, under your supervision?

A. Yes.

1401 Q. What is his name, sir?

A. Campbell.

Q. And do you know his initials?

A. J. E. Campbell.

Q. And where is he located, sir?

A. Atlanta, Georgia.

Q. And does Mr. Campbell call upon the trade in Atlanta and solicit orders for the round packaged blue label salt for the Morton Salt Company from various customers in this area?

A. He does.

Q. And has he any salesmen under his supervision?

A. Yes, sir.

Q. How many salesmen?

A. Four.

Q. And is it the duty of each of these salesmen to cover certain territories within the state of Georgia soliciting the trade for the Morton Salt Company?

A. Yes, sir.

Q. Do you have the same type of organization in the state of Florida, where you have a state supervisor?

A. No.

Q. You just have local salesmen there who solicit orders, and brokers?

A. Correct.

1402 Q. Is that also true as to other territories under your general supervision?

A. Yes, sir.

Q. Then, the state of Georgia is the only state where you have a state supervisor with salesmen under his supervision?

A. Yes.

Q. Will you state the method and means employed by your company in distributing your products in localities where you do not have a broker or a salesman located?

A. At Macon, Georgia, we employ the services of the M&M Distributing Company, a concern who specializes in distributing pool cars for the various manufacturers. We employ their services because they are equipped to handle and are responsible for the handling of the cars. They notify the customers on the arrival of the car, advising that they would have to take it out within 48 hours free time, otherwise, any demurrage after that is charged to the account of the customer.

Q. Does your company pay a fee to the M&M Distributing Company for the services performed by it in distributing its various commodities to your company's customers?

A. Yes, we do.

Q. And what is that fee, sir?

A. 3.6-cents per hundredweight, that is a standard charge.

1403 Q. And is that set by law?

A. I think so.

Q. And that would then be controlled by the laws of the Interstate Commerce Commission?

A. Correct.

Q. Has your company any other type of distributor other than the M&M Distributing Company, which you have just mentioned?

A. Not that I recall.

Q. How many such distributors are employed by your company in the territory in which you have direct supervision?

A. I don't know, I would have to check the records to find out.

Q. Are there others besides the M&M Distributing Company, if you know?

A. Yes, sir.

Q. There are others?

A. Yes.

Q. And they are paid on the same basis?

A. Yes.

Q. And they operate in practically the same manner?
A. Practically the same.
Q. Does the M&M Distributing Company do any storage for the Morton Salt Company?
A. They do not.
1404 Q. Their sole duty, then, is to see that the car is distributed to your customers?
A. Correct.
Q. That is, the contents of the cars are distributed to your customers?
A. Correct.
Q. Has the Morton Salt Company any customers with which it has a similar arrangement that it has with the M&M Distributing Company, whereby a fee is paid for the customer distributing the car to its competitors?
A. Not to my knowledge.
Q. Has that ever happened, if you know, sir?
A. No.
Q. How long have you been supervisor for this territory sir?
A. Since April 6, 1931.
Q. And how long have you been with the Morton Salt Company?
A. Since August 23, 1923.
Q. Do you know what the weight is of a minimum car of salt?
A. 45,000 pounds.
Q. And do you know what the maximum weight of a car of salt is?
A. There is no such thing.
Q. I mean, would it run 50,000, up that high, sir?
1405 A. Some of them run as high of 100,000.
Q. In one car?
A. According to the car.
Q. But the minimum weight would be around 45,000 pounds?
A. You have to pay freight on 45,000 if you don't ship but 20,000.
Q. And any additional tonnage up above that would be paid for on the same basis?
A. That is correct.
Mr. Haslett: I think that is all.
Mr. McBride: I have no questions.
(Witness excused.)

1406 Court Room No. 322,
Federal Building,
Greenville, South Carolina,
Monday, May 18, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

1407 Mr. Haslett: Mr. Britt.

JOE HENRY BRITT was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

1408 *Direct Examination by Mr. Haslett.*

Q. Will you state your full name, please, Mr. Britt?
A. Joe Henry Britt.
Q. Where do you reside, Mr. Britt?
A. 401 Winett Street, Greenville, South Carolina.
Q. And you are appearing voluntarily without a subpoena?
A. Yes, sir.
Q. In what business are you engaged, sir?
A. In the brokerage business.
Q. And how long have you been in the brokerage business?
A. Twenty-two years.
Q. And with what concern are you connected, sir?
A. Britt-McKinney Company.
Q. And where is that company located, sir?
A. At 301 West Washington Street, Greenville, South Carolina.

Q. And what is the business of the Britt-McKinney Company?

A. Well, we are food broker- selling agents.

Q. You are agents for various processors, known as your principals around the country, selling food and allied products to wholesalers?

A. Yes, sir.

Mr. McBride: Mr. Examiner, I object to the use of the word "agents" in the question. I have previously stated my reasons.

1409 Mr. Haslett: I think the Examiner has ruled on that before.

Trial Examiner Purcell: Gentlemen, I sustained that objection in the past, didn't I?

Mr. Haslett: I was under the impression that you overruled the objection, Mr. Examiner.

Trial Examiner Purcell: It is a matter of no importance one way or the other. Mr. McBride is objecting on the ground that there might be some legal construction to the word "agent" that has no place in this case with regard to this witness. Is that correct, Mr. McBride?

Mr. McBride: That is correct.

Mr. Haslett: It will be satisfactory to strike the word "agents" from the last question.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. You act as broker for various processors of food products throughout the country, selling food to the various wholesalers in and around Greenville, South Carolina?

A. Yes, sir.

Q. Are you the broker for the Morton Salt Company?

A. Yes, sir.

Q. And would you state briefly what your duties are in representing the Morton Salt Company in this area?

A. I try to sell all the salt that I can.

1410 Q. Do you go out and solicit the trade for the Morton Salt Company, and obtain orders for the round package and other types of salt processed by the Morton Salt Company?

A. I try to sell the package, I try to sell all of what they have, yes.

Q. How do you try to sell it? What manner and method do you use in trying to sell the salt processed by the Morton Salt Company?

A. Well, I have an order book, and I go in and talk to a buyer, and usually check his stock, if I can, and if he is short of salt, I try to get an order.

Q. Are these buyers wholesale grocery men?

A. Some of them are.

Q. What are the others, what type of customers do you have, sir?

A. Well, some chain buyers.

Q. What do you mean by "chain buyers"?

A. That conduct chains of retail grocery stores, and I also sell some to the retail trade for the buyer's account, sometimes.

Q. For the buyer's account?

A. Yes, sir.

Q. And do you sell, also, to wholesalers?

A. Yes, sir, I sell to wholesalers.

Q. And do you sell chain wholesalers?

1411 A. Well, I sell some to the chain store buyers.

Q. Do you sell C. D. Kenny Company?

A. No, sir, I don't sell Kenny. I haven't sold them in quite a while.

Q. Do you sell Thomas & Howard Company?

A. Well, yes, when I can.

Q. Would you name for us some of your wholesale customers' buyers, whom you solicit in behalf of the Morton Salt Company?

A. Well, I sell Lipscomb-Russell, and R. P. Turner, at Greer, and Thomas & Howard.

Q. Do you sell Cannon Wholesale Grocery Company?

A. No, sir, not now, I don't sell them now, no, sir.

Q. Did you in the past sell them, sir?

A. I have sold them, yes.

Q. Do you sell any buyers of salt outside of the city of Greenville?

A. No.

Q. Do you sell anyone in Laurens, South Carolina?

A. No, sir.

Q. How about in Greenwood, South Carolina?

A. I have sold some there.

Q. Did you ever sell Rose Phillips there?

A. Yes, sir.

Q. Do you sell anyone in Asheville, North Carolina?

1412 A. I do not.

Q. That is not in your territory?
A. No, sir.
Q. Would you state just the territory covered by you or your salesmen from the Greenville office of Britt-McKinney Company? How far south do you go?
A. To Greenwood.
Q. And how far east do you go?
A. Well, let's see, which way is east? Greenville.
Q. Greenville?
A. Yes.
Q. You mean you don't go—
A. Laurens is east from here, isn't it?
Q. Yes.
A. Well, I don't go to Laurens.
Q. You don't go as far as Laurens?
A. No, sir.
Q. Are there any little towns between Greenville and Laurens that you canvass on behalf of the Morton Salt Company?
A. No, sir.
Q. And how far north do you go?
A. To Greer.
Q. Is that in South Carolina?
A. Yes.
1413 Q. How far west do you go?
A. Seneca.
Q. Now, I believe you named some of your buyers who purchased through you from the Morton Salt Company. Will you state the method employed by you in soliciting those orders? Do you take the orders for them and transmit them to the Morton Salt Company, or what method is used by you in transmitting those orders to the Morton Salt Company, as a result of which salt is shipped to those buyers?
A. Well, I call on the buyer and try to sell him Morton salt. I have an order book, and if I can get the order, I write it up and leave a copy with him.
Q. What do you do with the original copy of it?
A. I send it to the company.
Q. Do you send it to the Morton Salt Company?
A. Yes.
Q. And does the Morton Salt Company pay you any commission or brokerage upon the purchases of these various buyers?

A. They pay me brokerage for what they ship.

Q. What is shipped?

A. Yes.

Q. And that is based on a percentage basis, or is it a flat unit price?

A. Well, on the round package, it is a flat unit price.

Q. And how much is that per case?

1414 A. I think it is 5-cents.

Q. Five cents a case?

A. Yes, sir.

Q. Now, on the bulk salt, how are you compensated for your services performed in behalf of the Morton Salt Company in soliciting orders for them for bulk salt?

A. It is a percentage—no, I think it is just a flat base.

Q. A flat base on bulk salt, also, sir?

A. I am not very clear on the amount of what the brokerage is, because I never checked behind Morton's statement. I always accept anything they send me as being correct, and I just don't recall. It is satisfactory, whatever it is.

Q. Do you have a contract with the Morton Salt Company?

A. Well, I have been their broker for twenty some odd years, and I think there was a contract at one time, but it is known, whatever it is, it is an understanding between Morton's and ourselves.

Q. You don't know whether there is a contract in existence at the present time or not?

A. I am sure there is an understanding, and I am sure there is a contract somewhere in the files.

Trial Examiner Purcell: Mr. Witness, you will simply have to hold your voice up. I can't hear you.

By Mr. Haslett:

1415 Q. It is quite a large room, Mr. Britt, so please keep your voice up.

A. All right, sir. Now, what was the question, please, sir?

Mr. Haslett: Read the last question, Mr. Reporter, please.

(The question and answer referred to was read by the reporter.)

By Mr. Haslett:

Q. And do you know whether or not that contract states the basis upon which you are to be compensated for your services on behalf of the Morton Salt Company?

A. I am sure so, yes.

Q. I believe you stated that you call on Lipscomb-Russell Company. Is that the name sir?

A. Yes, sir.

Q. And do you solicit orders from the Lipscomb-Russell Company on behalf of the Morton Salt Company and transmit those orders to the Morton Salt Company for Lipscomb-Russell's requirements of salt?

A. Well, I don't know about the requirements. They give me orders when I can sell them.

Q. What do you do with the orders?

A. I bring them to my offce and send them to Chicago, after consolidating them for pool cars, and so forth.

1416 Q. And you receive compensation from the Morton Salt Company on those orders?

A. They pay me for the work that I do in securing the business for them, yes, what is shipped.

Q. And do you solicit any orders from the Spratt Grocery Company at Laurens?

A. You are talking about salt?

Q. Yes, sir.

A. No, sir.

Q. Have you, since 1936, solicited orders for them for salt from the Morton Salt Company?

A. No, sir.

Q. I believe you mentioned Mr. Turner, Turner Grocery Company.

A. Yes, sir.

Q. Where are they located, sir?

A. At Greer, South Carolina.

Q. Do you solicit orders from the Turner Grocery Company for the Morton Salt Company in the same manner you did with the Lipscomb-Russell Company?

A. Well, as far as I know, I don't know of any difference in the way that I work them. I ask them all to—I try to sell them.

Q. I see. Have you ever on occasions obtained orders from the Turner Grocery Company for its require-

1417 ments of Morton salt, and transmitted the orders to the Morton Salt Company in Chicago?

A. Well, I have secured orders from Turner and sent the orders in to my company. I think it usually goes to the Washington office.

Q. And you have received compensation for that service?

A. Yes, sir, Morton Salt Company pays me, because of the contract we have, because of our agreement and understanding.

Q. And does the Morton Salt Company furnish you with any help to promote the sale of its products?

A. Well, I don't think that they furnish the help to me. They have salesmen that come to the territory, not necessarily to work with me, probably. They work, and I work, too.

Q. Do they go with you to visit the various buyers of salt, and solicit orders from such buyers from the Morton Salt Company?

A. Well, they have, yes.

Q. They have?

A. There have been times when they would be with me, yes.

Q. Now, when they make solicitations without your help from the various buyers of salt in this area, and receive orders from such buyers, do you receive compensation from the Morton Salt Company upon their sales to such buyers?

A. Well, I get compensation for what comes in my territory, that is shipped into my territory.

1418 Q. No matter who solicits the orders?

A. That is right.

Q. Does your company solicit the business of the Dixie Home Stores?

A. I do, yes.

Q. Do you call on the buyer at the Dixie Home Stores' office in Greenville here, and solicit orders for the Morton Salt Company?

A. Yes, sir.

Q. And you have received such orders from the Dixie Home Stores?

A. Yes, sir.

Q. And you have been paid compensation by the Morton Salt Company for such orders so received, is that correct, sir?

A. Yes, sir.

Q. Do you know the names of any so-called quantity buyers in this area that purchase from the Morton Salt Company in an amount that puts them in a class where they would be compensated by a discount for purchasing such requirements?

A. Well, I understand that Dixie qualifies on a quantity unit.

Q. Is that the only customer that you know of that gets the discount?

A. Well, I think Thomas & Howard gets it.

Q. Thomas & Howard gets it, also?

1419 A. Yes.

Q. How about C. D. Kenny Company? You don't know anything about those, I believe you testified that you didn't solicit their business, is that right?

A. No, sir, we do not.

Q. So, you wouldn't know anything about C. D. Kenny Company?

A. No, sir.

Q. But you do know that Thomas & Howard and Dixie Home Stores get the quantity discount?

A. Well, I don't know it. I think they do. I don't have anything to do with their operations. I have never given them anything. I have never seen anything definite.

Q. How many salesmen are employed by your company?

A. Myself and one more.

Q. One more?

A. Yes.

Q. Is it a corporation?

A. Not now, no, sir.

Q. What is it, just a privately owned firm?

A. Yes.

Q. And are you a part owner in the firm?

A. Yes.

Q. And you act as a bona fide broker, is that correct?

A. I think so.

Q. Do you solicit business for the Morton Salt
1420 Company on its types of salt that are sold in sacks, 100 pound sacks?

A. I try to sell their full line, whatever they have to offer.

Q. Their full line?

A. Yes, sir.

Q. Have you obtained orders from your various buyers for the bulk salt, as well as the round package salt?

A. I think so.

Q. Do you have any buyers who purchase salt for their own use in their particular business, such as curers of hides, or pottery works, or for any sort of industrial use?

A. Well, I don't know exactly what class you refer to.

Q. Large users of salt?

A. We work the bakeries and the merchants, that is the only business that we try to go after.

Q. Do you sell salt to the various local bakers?

A. We try to.

Q. Have you any customers that purchase Morton's salt through you that are local bakers?

A. No, sir, not right now.

Q. Not right now?

A. No.

Q. Have you, since 1936, had any such customers?

A. Well, I would have to refer to my records, because I wouldn't want to say that far back.

1421 Mr. Haslett: I think that is all, Mr. Britt.

Mr. McBride: I have no questions.

Mr. Haslett: Thank you very much, sir.

(Witness excused.)

Mr. Haslett: I will call as my next witness Mr. Clary.

MATTHEW WILSON CLARY was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. State your full name for the record, please, sir.

A. Matthew Wilson Clary.

Q. Do you reside in the city of Greenville, South Carolina?

A. Yes, sir.

Q. And in what business are you engaged?

A. I am with Dixie Home Stores, purchasing agent.

Q. You are the purchasing agent for the Dixie Home Stores?

A. Chain grocers, yes.

Q. And where are they located?

A. 320 South Hudson Street, is the warehouse and office.

Q. And is the Dixie Home Stores a corporation?

A. Yes, sir.

Q. Do you know under the laws of what state it is
1422 incorporated?

A. South Carolina.

Q. And how long have you been with the Dixie Home Stores?

A. About nine years.

Q. And you say the business of the Dixie Home Stores is selling groceries and allied products at retail to the consuming public?

A. Yes, sir.

Q. And they operate retail stores?

A. Yes, sir.

Q. How many such stores do they operate?

A. I believe the correct number today is 183.

Q. 183?

A. Yes.

Q. Could you state geographically what territory is covered by those 183 stores?

A. Mainly the Piedmont Section of South Carolina, also North Carolina from Charlotte west to the Tennessee line.

Q. Do you go into Georgia?

A. We have one store in Georgia, yes, in Toccoa, just across the South Carolina line.

Q. Do you operate as far east as Columbia?

A. Yes.

Q. What do you mean by the Piedmont Section?

A. Well, the territory, principally Spartanburg,
1423 Greenville, Anderson, Laurens, Newberry, Union and Chester Counties; the upper part of South Carolina. Our stores predominate in that territory.

Q. Your position with the company is purchasing agent?

A. Yes, sir.

Q. Will you state briefly your duties in connection with that position?

A. To purchase merchandise that we warehouse and then distribute to our retail stores by our own trucks.

Q. Has the Dixie Home Stores any competitors?

A. Quite a few, sir.

Q. Would you name some of them; please, sir?

A. Great Atlantic & Pacific Tea Company, Southern, or Colonial Stores, Littlejohn & Smith, operating as Community Cash Stores, and J. Drake Edens, in Columbia. I think that covers most of our chain competition. Of course, there are numerous independent retailers.

Q. You have numerous independent retailers in all areas where you market your products that sell in competition with you?

A. Yes, sir.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. And does it purchase salt from the Morton Salt Company?

A. Yes, sir.

1424 Q. What type of salt does your company purchase from the Morton Salt Company?

A. We purchase mostly the round cans, 26 ounce container.

Q. Is that the blue label salt?

A. Yes.

Q. Do you purchase any other type of salt from them?

A. We haven't in the past year or so. In the past two or three years, we have bought some squares and probably ice cream salt.

Q. What do you mean by squares, the 5-cent salt?

A. Yes, sir.

Q. How are orders placed by your company with the Morton Salt Company for its requirements?

A. Usually through Britt-McKinney Company. Occasionally one of the representatives of the Morton Salt Company will stop by and we will place the order with him.

Q. The Britt-McKinney Company, brokers, one of whom just testified?

A. Yes.

Q. As a result of those orders placed with Britt-McKinney Company, commodities are shipped to you from the Morton Salt Company?

A. No, sir, they are usually shipped in a pool car to Britt-McKinney Company.

Q. And how do you get them?

1425 A. Occasionally we will pick them up with our trucks, and sometimes we will have the car switched over from their warehouse to ours, depending on the quantity in the car, sir.

Q. Well, when you have the car switched from the Britt-McKinney Company to your warehouse, is there any additional charge for that switching service?

A. No, sir, it is only $2.48, the switching charge, and Britt-McKinney absorbs that.

Q. Britt-McKinney Company pays that?

A. Yes, sir.

Q. So, when you have the cars switched to your siding, it doesn't cost your company any additional money?

A. No, sir, but we probably have hauled 50 or 75 per cent of it.

Q. In your own trucks?

A. Yes.

Q. From the Britt-McKinney Company's siding?

A. Yes, that is right, sir.

Q. Do you know the price at which your company pays the Morton Salt Company for its round package blue label salt per case?

A. Yes, the invoice price is $1.60 per case, less a unit of 10-cents, or $1.50, and under a quantity discount plan, they remit,—I believe it is quarterly—10-cents a case, making our net cost $1.40 per case.

1426 Q. So, you pay $1.60 for it, and then you get 10-cents off the invoice price as a discount, and then an additional discount of 10-cents off of the list price of $1.50?

A. Yes, that is handled by check.

Q. Giving you a purchase price of $1.40 per case?

A. Yes, sir.

Q. And what do you mean, it is handled by check?

A. The 10-cents, it is mailed quarterly, I believe it is, 10-cents per case on the purchase of salt during that particular quarter.

Q. Mailed by whom?

A. By, I imagine, Morton's. I usually get it from their representative, Mr. Adams, I believe is the name.

Q. He mails a check to you for the 10-cents per case?

A. Yes.

Q. What do you do with that money sir?

A. We deposited it to our account and enter it up as an advertising—we carry an account in our ledger, "advertising allowance," and we enter it up on that account.

Q. And what is that money used for?

A. Advertising.

Q. The 10-cents that Morton gives you on each case is used for advertising?

A. Yes, we set up all of our advertising allowances and advertising receipts from all concerns. It is
1427 all set up under the same general account, and we, of course, expend more than that account.

Q. For advertising purposes?

A. Yes.

Q. Do you advertise Morton's round package salt?

A. Yes, quite often.

Q. And the money that comes to you by the Morton Salt Company is used to promote the sale of Morton's salt to the consuming public?

A. Yes. We don't have an advertising contract with Morton Salt Company for that specific purpose. However, we do advertise it, because it is a well known item in this territory, and we think it is a good trade stimulus.

Q. Are you required to advertise it?

A. No, sir.

Q. That is done on your own account?

A. Yes, sir.

Q. The 10-cents you receive is based on a quantity purchase, not for an advertising allowance, is that right, sir?

A. That is correct.

Q. These 183 stores that your company operate, are all of them of the same type?

A. No, sir, some of them are the large type self-service stores; I believe, 37 of those, and the others are what we class as small neighborhood stores, which are service
1428 stores.

Q. You say you have 37 of the large type?

A. Yes, sir.

Q. Do you use any particular designation for that type of store?

A. Yes, we call those Dixie Home Super Markets.

Q. Super Markets?

A. Yes, sir.

Q. And that is a self-service type?

A. Yes, a self-service type store.

Q. That is where the customer goes and takes a basket and waits on himself?

A. Yes.

Q. Now, the other stores that you operate are just local grocery stores?

A. Yes, just conventional type stores.

Q. And you have clerks in those stores to wait on the customers?

A. Yes, sir.

Q. What is the price that you sell Morton's round package salt in your super markets for?

A. Eight-cents.

Q. Eight-cents?

A. Yes.

Q. What price do you charge for it in your regular stores?

A. Nine-cents.

1429 Q. Does your company do any wholesale business?

A. No, sir.

Q. Does your company receive any other discounts or allowances from the Morton Salt Company other than the 10-cent discount that you receive on the round package salt?

A. No, sir, that is all, sir.

Q. Do you ever purchase on a carload basis where you buy a full car for your own use?

A. No, sir, I don't believe we have as yet brought in a full car of round. We have in the past, I would say, brought in straight cars of squares, but not of the round cans.

Q. Is the price at which your company pays for its requirements of salt an important factor in your business?

A. Yes, because it is a very large volume item, usually handled on a low margin of profit.

Q. So, the price would be an important factor?

A. Yes, sir.

Q. The price which you pay for it, sir?

A. Yes.

Q. Well, is the price at which your competitors sell its products given consideration by the Dixie Home Stores in determining the price at which it sells its products?

A. Yes.

Q. Why do you take that under consideration, sir?

A. Well, a can of Morton's round salt is not worth
1430 any more from our stores than it is from A&P or Rogers or Big Star, or any other market; it is still the same can of salt.

Q. So, either A&P, Rogers, or any of your principal

competitors, if they lowered the price of round package salt one-half cent per package, would that in any way affect your business?

A. Well now, I don't know about a half cent. In fact, one of our competitors now has a half-cent lower price than we have, but if the price was lowered as much as a cent, why, certainly we would be competitive, but a half cent, we don't usually pay an awful lot of attention to that, because that still makes it an 8-cent item for one unit.

Q. But if it was lowered from 8-cents to 7-cents a package, then it would have an effect on your business?

A. Yes, in all probability; we would meet that competitor.

Q. But where they sell two for fifteen, it doesn't affect your business?

A. I hardly think so. Not to any noticeable extent.

Q. Would your business be in any way affected by the fact that one of your competitors was paying $1.35 a case for Morton's round package salt, while at the same time you were paying $1.40 a case for it, sir?

Mr. McBride: I object to that, Mr. Examiner, for my usual reasons.

Trial Examiner Purcell: Objection overruled. You 1431 may answer.

The Witness: Yes, to the extent of our volume of salt per year multiplied by 5-cents, it would hurt our profit by that amount of money.

By Mr. Haslett:

Q. What effect would it have on your business if one of your competitors was getting additional discounts over and above the 10-cents and 15-cents per case discount that Morton usually grants the customers who purchased in the required amounts, would that in any way affect your business?

Mr. McBride: I object to that, Mr. Examiner.

Trial Examiner Purcell: The usual objection?

Mr. McBride: Yes, sir.

Trial Examiner Purcell: Objection overruled. You may answer.

By Mr. Haslett:

Q. Do you understand the question, sir?

A. Yes, to the extent that if there were too wide a differential, it would be very hard for us to meet a competi-

tor's price if it were lower. However, if we did have to meet that price, as I stated a few minutes ago, it would just reduce our profits.

Q. And you would either have to meet the price or lose the business?

A. Yes, if there were too wide a differential.

1432 Q. Does your company sell Morton's round package salt to any of the wholesalers in and around Greenville?

A. Yes, sir.

Q. And does your company make the 10-cents allowance that it receives from the Morton Salt Company, upon its purchases, available to such wholesalers who purchase from your company?

A. Yes, except that we charge them a 2-cents a case handling charge for the invoicing.

Q. That is, to give them an allowance of 8-cents per case?

A. Yes, sir.

Q. And you receive from the Morton Salt Company 10-cents per case?

A. Yes. We only started that January 1st of this year. Up until that time, we billed it to them at $1.40, but we started January 1st charging them $1.42 per case.

Q. Up to January 1, 1942, you gave them the same allowance that you got from the Morton Salt Company?

A. Yes.

Q. But since January 1, 1942, you have taken 2-cents off and put it as a handling charge, and allowed them 8-cents per case, is that correct?

A. Yes, sir.

Q. Do you know the names of some of the wholesalers that purchase from the Dixie Home Stores, and their requirements of Morton's free running salt and Morton's iodized salt?

144 A. Yes, I know the names of them, but I don't know what their requirements are, sir.

Mr. Haslett: Mr. Reporter, I hand you three documents and ask that they be marked for identification as Commission's exhibit 115-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 115-A, 115-B, and 115-C" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the Com-

mission and counsel for the respondent that the document marked for identification as Commission's exhibit No. 115-A is a letter from the Morton Salt Company, inter-office communication under date of November 8, 1941, addressed to the Dixie Home Stores, Greenville, South Carolina, and signed by W. T. Adams of the Morton Salt Company?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's exhibit 115-B is a stub of a check under date of October 31, 1941, in the account with the Dixie Home Stores, Greenville, South Carolina, from the Morton Salt Company, in the amount of $327.50?

Mr. McBride: Part of the check voucher.

Mr. Haslett: That is right, sir. Is it so stipulated?

Mr. McBride: Yes, sir.

1434 Mr. Haslett: And that the document marked for identification as Commission's exhibit 115-C is a statement showing the number of round cans of Morton's free running and iodized salt sold to the Dixie Home Stores of Greenville, South Carolina, showing the number of cases, 3275, and the amount $327.50?

Mr. McBride: That is correct.

Mr. Haslett: I offer the three documents in evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked by the reporter as Commission's exhibit 115-A, B, and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 115-A, 115-B, and 115-C" were received in evidence.)

By Mr. Haslett:

Q. Mr. Clary, I hand you now Commission's exhibit No. 115-C, and ask you to state whether the names that appear thereon are wholesale grocerymen who purchased Morton's round package and free running salt through the Dixie Home Stores of Greenville, South Carolina, sir?

Mr. McBride: I object to that question containing the word "through." He may ask whether they purchase
1435 from them and I will not object, but otherwise I shall. He has testified that he has such customers.

Trial Examiner Purcell: I understand the objection. What have you to say, Mr. Haslett?

Mr. Haslett: Mr. Examiner, it has been brought up a number of times before, and I think that if I am not mistaken, I have been allowed to examine the witnesses along this line.

Trial Examiner Purcell: Yes, Mr. McBride doesn't object to your examination along this line. He objects to the word "through" as inferring that the Morton Salt Company was acting through the Dixie Stores.

Mr. Haslett: Mr. Examiner, there is testimony here this morning that the broker for the Morton Salt Company solicited these various customers and transmitted the orders to the Morton Salt Company.

Trial Examiner Purcell: Yes, but the broker has nothing to do with the Dixie Stores, being used by way of a conduit by the Morton Salt Company, which is the present implication of your question. Is that correct, Mr. McBride?

Mr. McBride: That is correct.

Trial Examiner Purcell: I will sustain the objection and you can use some different phraseology.

By Mr. Haslett:

Q. Mr. Clary, did the Dixie Home Stores have
1436 salesmen to solicit orders from the various wholesalers whose names appear on Commission's exhibit No. 115-C?

A. No, sir, we didn't solicit them.

Q. How did those orders come to the Dixie Home Stores for the requirements of those various wholesalers, whose names appear thereon?

A. The orders didn't come through us.

Q. How were you advised to make such sales to such customers?

A. We only received the invoices from the Morton Salt Company, invoiced to us, and showing delivery to Todd-Woolbright, or Rose-Phillips, whoever it might have happened to be, and we, in turn, invoiced the merchandise to them. It didn't come through our warehouse at all.

Q. It did not?

A. No, sir.

Q. The only thing that was handled there was the bookkeeping end of it?

A. The invoicing, yes.

Q. Now, would the Dixie Home Stores have been able to obtain the discount on its round package salt if it did not

have the purchases of the various wholesalers whose names appear on Commission's exhibit 115-B?

Mr. McBride: If the Examiner please, I object to that. It calls for a speculative answer from the witness.

1437 Trial Examiner Purcell: I will overrule the objection.

By Mr. Haslett:

Q. You may answer, sir.

A. I am afraid I couldn't answer accurately without checking our records at the office.

Q. Do you know whether or not the Dixie Home Stores purchased for their own use, or for resale to the consuming public, 5,000 cases of free running salt during the year 1941, from the Morton Salt Company?

A. I just do not know, sir.

Q. Would it be possible to ascertain that information for us, sir?

A. Yes, sir.

Mr. Haslett: May we go off the record just a minute, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

By Mr. Haslett:

Q. Does the Dixie Home Stores of Greenville, South Carolina, sell any other commodities other than salt to the various wholesalers whose names appear on Commission's exhibit 115-B?

A. Only in rare instances.

Q. But is that a general custom?

1438 A. No, sir.

Q. I mean, selling salt to these people, is that a general practice, now, sir?

A. Yes.

Q. How long has that been in effect, sir?

A. I would just have to estimate it. It has been about two years, I imagine, possibly two and a half years.

Q. Up to January 1, 1942, you passed the full amount of the discount to such purchasers?

A. Yes, sir.

Q. And since that time, you have just been giving them 8-cents?

A. Yes, sir.

Q. Why did you do that, sir?

Trial Examiner Purcell: Why did he do what?

By Mr. Haslett:

Q. We were talking about discounts, passing 8-cents on and 10-cents on.

Trial Examiner Purcell: I see.

By Mr. Haslett:

Q. Why did you change your method of passing the discount on, and change it from 10-cents to 8-cents?

Mr. McBride: If the Examiner please, I object to that question. The Dixie Home Stores is not a respondent in this proceeding. It is not relevant to the issues here
1439 as to whether Dixie Home Stores makes any of its charges for its products to any of its customers.

Trial Examiner Purcell: I think it is quite proper, Mr. McBride. I will overrule your objection.

By Mr. Haslett:

Q. You may answer, sir.

A. We were handling it, and we had to handle the invoicing and collections. Some of them were a little slow in paying their invoices; would probably hold them for 30 to 45 days, and we were out of our money for a while, and we decided that we would put a handling charge on it of 2-cents per case.

Q. Was that done after any consultation with any representative of the Morton Salt Company?

A. No, I made the objection to the Morton Salt Company that we didn't like to handle the merchandise without any charge at all, and I asked if there would be any objection to making a handling charge on it.

Q. Did Mr. Britt, the broker of the Morton Salt Company here in Greenville, have knowledge of this arrangement that you had with the various wholesalers?

A. Yes, I am reasonbly sure he did.

Q. And did the salesmen who solicit your business from the Morton Salt Company know that such an arrangement was in effect?

A. I would think so.

1440 Q. No single purchaser of salt whose name appears on Commission's exhibit 115-C purchased in the

amount of 5,000 cases of free running salt per year from the Morton Salt Company, do they sir?

A. I wouldn't think so.

Mr. McBride: I will have to ask that the question and answer be re-read.

(The question and answer referred to was read by the reporter.)

Mr. McBride: I object to that question for quite obvious reasons, because he just testified that he sold these people himself.

Trial Examiner Purcell: What have you got to say about that, Mr. Haslett?

Mr. Haslett: Read the question back, and I think it will clear itself up very nicely.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Do you insist upon your objection?

Mr. McBride: Yes.

Trial Examiner Purcell: What do you say, Mr. Haslett?

Mr. Haslett: I asked him whether any single purchaser whose name appears there ever purchased from the Morton Salt Company, and he said they do not. It is a purely
1441 proper question and a proper answer. If they do, he could say they do, and if they don't, why, no; but there is nothing wrong with that question.

Trial Examiner Purcell: Let's go off the record now.

(A discussion was had off the record.)

Trial Examiner Purcell: Let's get on the record.

Objection by counsel for the respondent sustained.

By Mr. Haslett:

Q. I believe you testified that your company does not solicit business of the various named wholesalers who appear on Commission's exhibit 115-C, is that correct?

A. That is correct, sir.

Q. How does your company receive information that such sales have been made to such customers whose names appear on Commission's exhibit 115-C?

A. We don't know until we get the invoice from the Morton Salt Company.

Q. The Morton Salt Company advises you through their invoices that such sales have been made to such customers?

A. They make an invoice direct to us covering the amount, and then a slip is usually attached to the invoice

showing the number of cases for any concern that is listed on there, other than ours.

Mr. Haslett: Now, Mr. Examiner, I think that I
1442 will ask that my question be given consideration at this time, and again press the question as to this witness.

Mr. McBride: Same objection, Mr. Examiner. There has been no qualification in the interim that would suggest that this witness has any more knowledge than he did before on that question.

Trial Examiner Purcell: Objection sustained.

By Mr. Haslett:

Q. Mr. Clary, I will ask you at this time whether or not during the year 1940 the Dixie Home Stores purchased from the Morton Salt Company for its own use, that is, in its own stores, 5,000 cases of Morton's free running and iodized salt?

A. No, sir, we did not.

Q. Did you purchase less than 5,000 cases?

A. Yes.

Q. How many cases did you purchase in 1940?

A. 2,151.

Q. That was for your own use?

A. Yes, sir.

Q. And I will ask you as to the year 1941 how many cases the Dixie Home Stores purchased from the Morton Salt Company for its own use of the round package free running and iodized salt?

A. 2,817.

1443 Q. So, in neither the year 1940 or '41, you purchased the requirements of 5,000 cases or more?

A. No, sir, we did not.

Mr. McBride: I ask that the question and answer be stricken. The previous testimony was that Dixie Home Stores had purchased over 5,000 cases. If counsel wishes to confine his last question to use in retailer stores, I will withdraw my objection.

Trial Examiner Purcell: It was so predicated.

Mr. McBride: Not the last question, if the Examiner please.

Trial Examiner Purcell: Objection sustained. Make it on 1941 the same as 1940.

Mr. Haslett: I think the record is perfectly clear.

Trial Examiner Purcell: I thought so, too, but it is easier to clear it up than it is to quibble over it.

By Mr. Haslett:

Q. Mr. Clary, then in the years 1940 and 1941, your company purchased less than 5,000 cases of Morton's free running salt in each year for its own use in its own stores?

A. Yes, sir.

Q. And unless it had this combined purchases of the various wholesalers, whose names appear on Commission's Exhibit 115-C, it would not have been eligible for the 10-cent rebate per case from the Morton Salt Company, is that correct, sir?

1444 A. Yes, that is correct.

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's Exhibit 116-A and B.

(The documents referred to were marked "Commission's Exhibit 116-A and 116-B" for identification.)

Mr. Haslett: Mr. McBride, is it stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 116-A is a true and correct photostat copy of an invoice numbered 89151 from the Morton Salt Company, of commodities sold to the Dixie Home Stores, and shipped to R. P. Turner, under date of December 30, 1941?

Mr. McBride: That is correct.

Trial Examiner Purcell: What is that invoice number, please?

Mr. Haslett: 89151.

Trial Examiner Purcell: Very well.

Mr. Haslett: And that the document marked for identification as Commission's Exhibit 116-B is an acknowledgment of an order under date of 12-22-41 from the Dixie Home Stores to the Morton Salt Company, consigned to R. P. Turner at Greer, South Carolina, numbered 895?

Mr. McBride: It is an acknowledgment from the Morton Salt Company to Dixie Home Stores?

1445 Mr. Haslett: That is right.

Mr. McBride: Correct.

Mr. Haslett: I offer the two documents into evidence, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked by the reporter as Commission's Exhibit No. 116-A and B.

(The documents referred to, heretofore marked for identification as "COMMISSION'S EXHIBIT 116-A AND 116-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Clary, I hand you again Commission's Exhibit 115-C, and ask you to state whether the name of R. P. Turner appears thereon?

A. Yes, sir.

Q. And is that the same R. P. Turner that has been purchasing its requirements of salt from the Morton Salt Company and having its products billed by the Dixie Home Stores?

Mr. McBride: I object to that question.

Trial Examiner Purcell: Do you mind stating your objection?

Mr. McBride: The same story again, Mr. Exam-
1446 iner. This witness isn't qualified to state what R. P. Turner does, with or without the Morton Salt Company. I take it that he is qualified only with respect to transactions by Dixie Home Stores handling the transactions as the seller to Turner.

Trial Examiner Purcell: Now, let me have the question again.

(The question referred to was read by the reporter.)

Mr. Haslett: I can't see anything wrong with that question, Mr. Examiner.

Trial Examiner Purcell: The delivery was made by the Morton Salt Company through the Dixie Home Stores, it was billed by the Dixie Home Stores to the consignee of the Morton Salt Company, under the direction of the Morton Salt Company. Am I correct in that statement?

Mr. Haslett: That is right.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: Repeat the question, please.

(The question referred to was re-read by the reporter.)

The Witness: Yes, but there is only one product that we have billed.

By Mr. Haslett:

Q. And that is the round package?

1447 A. Just the round package, is the only package that we have billed them, no other salt products of the Morton Salt Company.

Q. And that is the package that he receives the discount on?

A. Yes.

Mr. Haslett: Mr. Reporter, I hand you herewith three documents, and ask that they be marked for identification as Commission's Exhibit 117-A, B, C.

(The documents referred to were marked "Commission's Exhibit 117-A, 117-B and 117-C" for identification.)

By Mr. Haslett:

Q. Mr. Clary, you have been handed three documents which have been marked for identification by the reporter as Commission's Exhibit 117-A, B and C, and I will ask you to describe Commission's Exhibit No. 117-A. What is that, sir, if you know?

A. That is our invoice to Moore Milling Company of Greenville for 100 cases of Morton's salt.

Q. And has it a date?

A. No, sir, there is no date on the invoice.

Q. Now, I will ask you to refer to the next exhibit, 117-B, Mr. Clary, and ask you to state what that is?

A. That seems to be a delivery ticket from Britt-McKinney Company to Moore Milling Company, signed

1448 by one of their drivers.

Trial Examiner Purcell: Raise your voice, please, so that I may hear you.

The Witness: I say, this is a delivery ticket delivered by Britt-McKinney Company to the Moore Milling Company, signed by one of their drivers, for 95 cases of salt.

By Mr. Haslett:

Q. Has it a date, sir?

A. Yes, January 20, 1942.

Q. And would you refer to the next document, Commission's Exhibit 117-C?

A. That is also a delivery ticket dated January 20, 1940, to Moore Milling Company from Britt-McKinney Company for five cases of 24/26 ounce salt.

Q. Does the quantity of Commission's Exhibit 117-B

and 117-C total the invoice of the number of cases on Commission's Exhibit 117-A?

A. Yes, sir.

Mr. Haslett: I offer the documents in evidence, Mr. Examiner.

Trial Examiner Purcell: Any objection, Mr. McBride?

Mr. McBride: I am not sure yet, Mr. Examiner. No objection.

1449 Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked by the reporter as COMMISSION'S EXHIBIT NO. 117-A, B, and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 117-A, 117-B and 117-C" were received in evidence.)

Mr. Haslett: I would like to state for the record that Commission's Exhibit 117-A has a number on it, and it is known as 2486; that is the invoice from the Dixie Home Stores to the Moore Milling Company.

Trial Examiner Purcell: It is so noted.

Mr. Haslett: Mr. Reporter, I hand you four documents and ask that they be marked for identification as Commission's Exhibit 118-A, B, C, and D.

(The documents referred to were marked "Commission's Exhibit 118-A, 118-B, 118-C and 118-D" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 118-A is an inter-office communication passing between the Morton Salt Company's main office in Chicago, and its Washington office under date of July 11, 1941?

Mr. McBride: That is correct.

1450 Mr. Haslett: And that the document marked for identification as Commission's Exhibit 118-B is an interoffice communication from the Morton Salt Company under date of July 19, 1941, addressed to the Dixie Home Stores, Greenville, South Carolina, and signed by W. T. Adams?

Mr. McBride: It is not an inter-office communication. It is merely on inter-office communication stationery. Otherwise, that is correct.

Mr. Haslett: And that the document marked 118-C for identification is a stub of a voucher of adjustment, under

date of July 15, 1941, from the Morton Salt Company, in account with Dixie Home Stores?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's Exhibit 118-D is a statement showing the number of cases of round package free running and iodized salt sold during the months of April and May to various wholesalers whose names appear thereon by the Dixie Home Stores of Greenville, South Carolina, totalling 1710 cases, in the amount of $171?

Trial Examiner Purcell: April and May of what year?

Mr. McBride: It is so stipulated, Mr. Examiner, but I am not sure that counsel stated all of the cases sold, but the cases listed thereon, I will agree were sold during the months indicated in 1941.

1451 Mr. Haslett: 1941, that is correct. I offer the four documents into evidence.

Trial Examiner Purcell: Did you accept the limitations of counsel?

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked by the reporter as COMMISSION'S EXHIBIT NO. 118-A, B, C and D.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 118-A, 118-B, 118-C, and 118-D" were received in evidence.)

By Mr. Haslett:

Q. Mr. Clary: I hand you Commission's Exhibit 118-D, and call your particular attention to the names that appear thereon, and ask you to state whether or not the commodity shown thereon, being Morton's free running and iodized salt on a case basis, was sold by the Dixie Home Stores of Greenville, South Carolina, to such wholesalers?

A. It was invoiced by us.

Q. But it was not sold?

A. No, sir.

Q. Your testimony in regard to the wholesalers
1452 whose names appear thereon would be the same as to Commission's Exhibit 115-C, is that correct?

A. Yes, sir.

Q. Do you, of your own knowledge, know who J. Drake Edens of Columbia, South Carolina, is, sir?

A. Yes.

Q. What is he?

A. He operates a chain of stores with headquarters in Columbia, a chain of about 12 or 15 stores, perhaps a few more.

Q. Is that retail stores?

A. Yes, sir.

Q. And they are competitors of the Dixie Home Stores in Columbia?

A. Yes.

Q. Do you of your own knowledge know what Lipscomb-Russell Company is, sir?

A. They are wholesale grocers, drygoods and notions operators in Greenville.

Q. They don't sell to the consuming public directly, do they?

A. Not that I know of, sir.

Q. Do you know the Anderson Hardware Company of Anderson, South Carolina?

A. They are also wholesale grocers.

Q. They are wholesale grocers?

1453 A. Yes, sir.

Q. And what is the Erwin Wholesale Grocery Company, of Spartanburg, South Carolina?

A. I am not familiar with them. I imagine, though, that they are wholesale grocers, from what their name implies.

Q. Do you know J. H. Sudduth?

A. Wholesale grocers.

Q. He sells groceries and allied products to the retail stores?

A. Yes, sir.

Q. W. S. Morgan, of Spartanburg, South Carolina?

A. I am not familiar with his concern.

Q. How about the Laurens Distributing Company?

A. Yes, sir.

Q. Laurens, South Carolina, they are also wholesale grocers?

A. Yes, sir.

Trial Examiner Purcell: Can you hear the witness, Mr. McBride?

Mr. McBride: At times, yes.

Trial Examiner Purcell: That isn't fair when counsel is conducting a case. He is entitled to be heard. Mr. Witness, will you keep your voice up?

The Witness: Yes, sir.

Trial Examiner Purcell: We have a large room here, and the acoustics are not all that they might be.

1454 By Mr. Haslett:

Q. Do you know the Eagle Grocery Company of Union, South Carolina?

A. Yes, they are also wholesale grocers.

Q. How about the Todd-Woolbright Company?

A. Yes.

Q. They are wholesale grocers, also?

A. Yes, sir.

Q. Littlejohn & Smith Distributing Company, Spartanburg, South Carolina, do you know what they are?

A. Yes, they operate some retail grocery stores in connection with their wholesale grocery business.

Q. And are those retail stores in competition with the Dixie Home Stores?

A. Yes, sir.

Q. How about W. S. Morgan of Spartanburg, South Carolina?

A. I am not familiar with him.

Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's Exhibit 119?

(The document referred to was marked "Commission's Exhibit 119" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 119 is a photostat

1455 copy of an invoice of the Morton Salt Company, numbered 67126, sold to the Dixie Home Stores, Greenville, South Carolina, shipped to Morris & Company, Pickens, South Carolina, date shipped September 17, 1941?

Mr. McBride: It is so stipulated.

Trial Examiner Purcell: Has it a number?

Mr. Haslett: Yes, 67126.

Trial Examiner Purcell: Very well.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's Exhibit No. 119.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 119" was received in evidence.)

Mr. Haslett: I hand the reporter two documents and ask that they be marked for identification as Commission's Exhibit No. 120-A and B.

(The documents referred to were marked "Commission's Exhibit 120-A and 120-B" for identification.)

By Mr. Haslett:

Q. Mr. Clary, I hand you what has been marked for identification as Commission's Exhibit 120-A, and ask
1456 you to state what that is, if you know, sir?

A. That is an invoice to us from the Morton Salt Company covering a shipment of 100 cases of Morton's salt, shipped to their broker in Columbia, Johnson & Simmons, for delivery to J. Drake Edens, of Columbia.

Q. Has it a date, sir?

A. Yes, September 19, 1941.

Q. Has it an invoice number?

A. Invoice number 68035.

Q. The penciled notations appearing thereon, were they put there in the regular course of business by the Dixie Home Stores?

A. Yes, that is our record on this invoice showing the date and our invoice number covering the invoicing of this particular order to J. Drake Edens, in Columbia.

Q. And I refer you now to Commission's Exhibit 120-B for identification, and ask you to state what that is, if you know, sir?

A. That is an order acknowledgment from the Morton Salt Company, Washington, D. C., to Johnson & Simmons, Columbia, covering 100 cases of Morton's salt, which is to be shipped to the Drake Edens Company at Columbia, and to be invoiced at Dixie Home Stores, Greenville, South Carolina.

Q. Has it a number, sir?

A. No. W-3178.

1457 Q. Has it also a date, sir?

A. September 11, 1941.

Trial Examiner Purcell: Is that No. 33117?

Mr. Haslett: No. W-3178.

Trial Examiner Purcell: Thank you.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked by the reporter as Commission's Exhibit No. 120-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 120-A and 120-B" were received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's Exhibit No. 121-A and B.

(The documents referred to were marked "Commission's Exhibit 121-A and 121-B" for identification.)

Trial Examiner Purcell: Any objection?

Mr. Haslett: May we be off the record just a moment?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

1458 Mr. Haslett: Am I correct, Mr. McBride, when I say it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as 121-A is a true and correct copy of an invoice from the Morton Salt Company, numbered 23014, sold to the Dixie Home Stores, Greenville, South Carolina, under date of January 8, 1941?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's exhibit 121-B is an acknowledgment of the order of the Morton Salt Company, numbered W-1959, which acknowledgment is in connection with the commodities sold as represented by the invoice known as Commission's exhibit 121-A?

Mr. McBride: That is correct.

Mr. Haslett: I offer the documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked by the reporter as Commission's Exhibit 121-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 121-A and 121-B" were received in evidence.)

Mr. Haslett: Mr. Examiner, I hand the reporter three documents and ask that they be marked for identifi-
1459 cation as Commission's exhibit No. 122-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 122-A, 122-B and 122-C" for identification.)

By Mr. Haslett:

Q. Mr. Clary, I hand you what has been marked for identification as Commission's exhibit No. 122-A, and ask you to describe what that is, if you know, sir?

A. This is a letter that accompanied a voucher check in the amount of $260, covering our 10-cents per case rebate on 2600 cases of round package salt sales, the last quarter of 1941.

Q. Was that letter received by your company from the Morton Salt Company?

A. From one of their representatives, yes.

Q. Has it a date?

A. January 21, 1942.

Q. Now, will you describe the next document, please, sir?

A. The next document seems to be the check voucher.

Q. From the Morton Salt Company?

A. Yes, sir.

Q. Has it a date, sir?

A. I can't see it, if it has.

Q. Can you see the figures that appear thereon, sir?

A. Yes, this is $260.

Q. And then the next document, what is Commis-
1460 sion's exhibit No. 122-C for identification?

A. It is a list showing the total number of cases for each concern listed, invoiced to ourselves, and also to the concern to whom we invoice salt.

Q. And that was for the months of October, November and December, 1941?

A. That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. MeBride: Mr. Examiner, I have no objection to the documents, except I would like the record to show that with respect to 122-B, the witness apparently has better eyesight than I have, because the photostat is so indistinct. I will let the document in for whatever it is worth, but I am not certain that the witness can tie it in with the other

two documents. I make no point of it, other than to show that on the record with respect to the condition of the exhibit.

Mr. Haslett: I will be glad to have a new photostat made and substitute it for this when I return to the office. Is that satisfactory?

Trial Examiner Purcell: Make a memorandum on the record of Mr. Haslett's offer, and see that a copy is furnished to Mr. McBride. In the meantime, there being no objection, the documents described will be received in evidence and marked as Commission's Exhibit No. 122-A,

1461 B and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 122-A, 122-B and 122-C" were received in evidence.)

Trial Examiner Purcell: Now, gentlemen, it is 12:15. What is the disposition of counsel with regards to the lunch recess?

Mr. Haslett: I have just one or two additional questions and I can celar up the direct examination of this witness.

Trial Examiner Purcell: Very well, sir, we will proceed.

By Mr. Haslett:

Q. Mr. Clary, why did your company begin the practice of invoicing salt to the various wholesalers as shown by Commission's exhibit 115-A, B and C?

A. Because our volume was not sufficient to qualify in the 5,000 case bracket in order to receive the additional 10-cents per case, and we had to have some additional volume to enable us to reach the 5,000 case bracket.

Q. So the combined purchases of the various names that appear on Commission's Exhibit No. 115-C, and other names that appear on the various exhibits after that number, were used in order to make Dixie Home Stores eligible for that discount?

1462 A. Yes, sir.

Mr. Haslett: I think that is all, Mr. Examiner. I have no further direct examination, and will turn him over to Mr. McBride for cross-examination.

Cross-Examination by Mr. McBride.

Q. Mr. Clary, I show you Commission's exhibit No. 116-A, and Commission's exhibit No. 119.

A. Yes.

Q. And Commission's exhibit No. 120-A.

A. Yes.

Q. And Commission's exhibit No. 121-A.

A. Yes, sir.

Q. You identified those, I believe, as being invoices from the Morton Salt Company to Dixie Home Stores?

A. Yes, that is correct.

Q. And were those invoices paid by Dixie Home Stores to the Morton Salt Company?

A. Yes.

Q. Now, I show you Commission's Exhibit No. 117-A, which you identified, I believe, as an invoice from Dixie Home Stores to the Moore Milling Company?

A. Yes.

Q. Numbered 2486?

A. Yes, that is correct.

1463 Q. And that invoice was paid by the Moore Milling Company to the Dixie Home Stores?

A. Yes, that is correct.

Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: Just one question on redirect.

Redirect Examination by Mr. Haslett.

Q. Mr. Clary, Commission's exhibit No. 117-A, which I hand you herewith, is that typical of the invoices that pass between the Dixie Home Stores and various wholesalers who purchase Morton's free running and iodized salt?

A. Yes, because we do very little of it, and it is just our regular invoice form to our stores. We don't have a particular form for that.

Q. And Commission's exhibit No. 116-A, 119, 121-A and 120-A are typical of the invoices passing between the Morton Salt Company and the Dixie Home Stores?

A. Yes, sir.

Mr. Haslett: I think that is all, sir.

Mr. McBride: I have no further questions.

Trial Examiner Purcell: You are excused.

(Witness excused.)

Mr. Haslett: Mr. Examiner, I would like for the record to show that Mr. Williamson, vice-president of the Dixie Home Stores, was subpoenaed as a witness in support
1464 of the Commission's case, and has been excused. Mr. Clary testified in his stead, and a new subpoena was issued for Mr. Clary.

Trial Examiner Purcell: Let the record so show.

1465 Mr. Haslett: I will call as my next witness Mr. Sales.

GUY MARTIN SALES was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. What is your full name, Mr. Sales?

A. Guy Martin Sales.

Q. Where do you reside, sir?

A. I reside at 88 Bear Creek Road, in West Asheville, North Carolina.

Q. And in what business are you engaged?

A. I am general manager of the Farmers' Federation up there, a farmer cooperative association, mercantile.

Q. And is the Farmer Federation located in Asheville, North Carolina?

A. Its headquarters, yes.

Q. And what is the business of the Farmers' Federation?

A. Well, it handles supplies for the farmers and
1466 markets produce growing on the farms. It is owned by farmers. There are some 7,000 members in the Association.

Q. Does it operate retail stores?

A. Yes, sir.

Q. And does your office do the purchasing of the requirements for the retail stores?

A. Most of the purchasing is done at Asheville and distributed, although the stores themselves purchase quite a bit directly from the farmers.

Q. But as to staple products, are they purchased through the Asheville office?

A. Yes, sir.

Q. Is it a corporation?

A. Yes, sir.

Q. And is the stock owned individually by a number of farmers?

A. That is right.

Q. And they have a share and voice in the running of the corporation?

A. Each one has a vote, and only one vote, regardless of the number of shares of stock owned.

Q. What territory is covered by the Farmers' Federation?

A. Well, practically all of Western North Carolina counties from Caldwell to Burke, Rutherford and Polk east back to Cherokee County at Murphy.

1467 Q. All within the state of North Carolina?

A. Yes, sir.

Q. Does the Farmers' Federation have competitors?

A. Yes, sir.

Q. In the grocery line?

A. Yes, sir.

Q. Would you name some of them, please, sir?

A. Well, we have C. D. Kenny Company, Ebbs Brothers, Slade & Fakes, Thomas & Howard, J. A. Groves. Those are the larger ones that I recall right now.

Q. Do you encounter the competition of Charles Moody & Company?

A. I don't think so. I don't recall much about Charles Moody & Company.

Q. Well, the retail stores that are associated with the Farmers' Federation, have they any competitors?

A. Yes, sir.

Q. Would you name some of those?

A. Well, they have their local competitors at each town they are in, you know.

Q. I see.

A. And other retail stores, local retail stores like A&P, Dixie Stores, and independent grocery stores of all kinds.

Q. Does your company purchase or handle salt?

A. Yes, sir.

1468 Q. Does it make purchases from the Morton Salt Company?

A. Yes, sir.

Q. Does it make purchases from any other processor of salt?

A. We purchase most of our bulk salt, 100 pound bags, from International Salt Company.

Q. Do you purchase any bulk salt from the Morton Salt Company?

A. I don't believe so. I don't recall of purchasing any recently.

Q. What type of salt do you purchase from the Morton Salt Company?

A. Mostly packaged salt, salt for seasoning and one pound packaged salt, iodized salt.

Q. You mean, round package blue label salt?

A. Yes, sir.

Q. That is, free running and iodized?

A. That is right, that is the way it is billed.

Q. How are orders placed by your company with the Morton Salt Company for its requirements of the salt that it does purchase from the Morton Salt Company?

A. Well, we pick it up from the local food broker, Charles M. Britt, there in Asheville.

Q. Charles M. Britt?

A. Yes, sir.

Q. Is there any relation between Charles M. Britt 1469 and Britt-McKinney Company here in Greenville?

A. I understand they are brothers. I have been told they were since I came down here this morning.

Q. Does the broker solicit orders from your company?

A. Yes, sir.

Q. And as a result of which, commodities are shipped by the Morton Salt Company to your main warehouse there in Asheville?

A. Well, we don't handle an awful lot of that package salt. I think we pick most of ours up by truck right there at the food broker's place of business. He is just below us there on Depot Street in Asheville.

Q. Does he operate a warehouse?

A. Yes.

Q. And you just go to his warehouse and pick it up?

A. Yes, sir.

Q. And are you billed directly by the Morton Salt Company for those requirements?

A. We are billed, yes, I think we are.

Q. Do the invoices come on the Morton Salt Company's invoice form?

A. Yes, with Charles M. Britt's name on the top of it.

Q. What is the price that your company pays for its round package blue label salt that it purchases from the Morton Salt Company?

1470 A. Well, I have brought some invoices with me here that covers about a year, last fall and this spring, and on that particular item the price is $1.50, that is the one pound and ten ounce iodized package.

Q. Is that $1.50 per case?

A. Yes, of two dozen.

Q. Do you know the price which your company resells it to its retailer customers for?

A. We sell it for about $1.65 from the wholesale house to the retailer dealer per case, that is, 82½ cents a dozen.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. Not that I know of.

Q. Does it make any purchases on a carload basis at all?

A. Not from the Morton Salt Company, I don't think.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. It wouldn't be of great deal importance on this particular line. It would be more so on the 100 pound salt that we buy from other firms.

Q. Well, on all of your requirements of salt, is it an important factor?

A. It is to the extent of what salt business we do, yes.

Q. And the price which you pay for all of your commodities, whether salt or otherwise, would be an im-

1471 portant factor, would it not, sir?

A. Yes.

Q. Is the price at which your competitor sells its salt given consideration by your company in determining the price at which it is going to sell its salt?

A. As much so as possible.

Q. Is your business in any way affected by the fact that some of your competitors would sell Morton's round package salt at $1.60 a case, while at the same time you were selling it at $1.65 a case?

Mr. McBride: If the Examiner please, I would like for that question to be read back.

(The question referred two as read by the reporter.)

Mr. McBride: Off the record, if I may.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.
Mr. Haslett: I will clear the question up.
Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. What effect would it have upon your business if one of your competitors sold Morton's round package blue label salt, free running and iodized salt, at $1.60 a case, while at the same time you were selling it at $1.65 a case?

A. It would have a tendency that we would sell less, naturally.

1472 Q. What effect would it have upon your business if one of your competitors was paying $1.42 a case for Morton's round package blue label free running and iodized salt, while at the same time you were paying $1.50 a case for it, sir?

Mr. McBride: My usual objection to that question, Mr. Examiner.

Trial Examiner Purcell: The objection is overruled. The witness may answer.

The Witness: Well, I think we would sell less salt. We have to retail our salt about 10-cents on these pound packages, because we pay 75-cents, and then have to haul it from Asheville maybe to Murphy, 125 miles away, and each of our stores fixes their own retail price, but I know from general knowledge that most of them retail it around 10-cents per pound package.

By Mr. Haslett:

Q. They retail the salt to the consumer at 10-cents per package?

A. Yes, sir, some of them, some few of them, may sell it at 9-cents, but I am positive that most of them sell it for 10. We don't sell an awful lot of it and haven't pushed it a great deal, so we haven't noticed any competition so much as one who devotes their entire business to the grocery line.

Q. Do you know approximately the dollar volume of business done by your company with the Morton Salt Company?

1473 A. I would say about $700 a year.

Q. If one of the competitors of the retail outlets associated with your company was selling Morton's salt at 7-cents per package to the consumer, while at the same

time your retail outlet was selling it at 9 cents a package, would that in any way affect your business?

Mr. McBride: If the Examiner please, my usual objection to that question, as far as this witness is concerned, in view of his testimony to the effect that they have no jurisdiction over the resale price of the retail members of this organization. If I understand his qualifications, they obtain only with respect to their wholesale or warehousing process. This is something different than the usual type of chain store arrangement with the warehouse purchasing.

Mr. Haslett: Mr. Examiner, he testified he is the general manager of this company, and they have retail stores associated with it. It is one organization, and he knows of his own knowledge what the prices are, he should certainly know whether or not the differential in price of the resale price of the commodity to the consumer would in any way affect the business of the retail outlets of his organization.

Trial Examiner Purcell: Is it your contention, then, that there is nothing to Mr. McBride's objection that this witness has nothing to do with the fixing of prices in
1474 the retail stores; that that is individually done by the stores themselves?

Mr. Haslett: He testified he was the general manager of this organization, and the retail stores are members of his organization, and I don't remember his testifying to the fact that they set their own prices in the stores.

Trial Examiner Purcell: I think he so testified. That would seem to be the only real basis for an objection, and yet, I don't think that is sufficient. I will overrule the objection.

Mr. Haslett: Read the last question, Mr. Reporter, please.

(The question referred to was read by the reporter.)

The Witness: I think we would sell less salt.

By Mr. Haslett:

Q. I believe you testified, Mr. Sales, that you are the general manager of the Farmers' Federation?

A. Yes, sir.

Q. And how long have you been general manager, sir?

A. Since 1927.

Q. And what are your duties in connection with that position?

A. General supervision of the whole business, the warehouse managers, salesmen, departmental heads, and
1475 general supervision of the entire business.

Q. And would the retailer stores come under your supervision?

A. Yes, sir. I could explain how we handle our pricing, if you would like to have it.

Q. I think that is quite all right now, sir.

Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's Exhibit No. 52, except as to the quantity of the product, date, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company, and the Farmers' Federation, Inc., of Asheville, North Carolina, who is a customer of the respondent, Morton Salt Company, and that said Commission's Exhibit No. 52 is typical of such invoices for the sale of salt of the same type that appears thereon that pass between the respondent herein and its customer, Farmers Federation, Inc., of Asheville, North Carolina, and that such invoices have in the regular course of respondent's business passed between the respondent and the said customer, Farmers' Federation, Inc., of Asheville, North Carolina, since the respondent began the sale of, and the said customer, Farmers' Federation of Asheville, North Carolina, began the purchase of the type of product as appears on Commission's Exhibit No. 52.

1476 Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. Does your company do any promotional work in connection with the resale of Morton's products to the consuming public?

A. We travel salesmen from the wholesale house there in Asheville.

Q. You travel salesmen?

A. Yes, who call on the trade, just like any other wholesale firm.

Q. And they solicit orders for Morton's salt and other products?

A. Yes.

Q. Does your company sell to any retailer who is not a member of the Farmers' Federation?

A. Yes.

Q. It is in the general wholesale business?

A. Yes, sir.

Q. And does not make any distinction as between customers?

A. No, sir.

Q. I believe you testified, Mr. Sales, that your company handles quite a bit of bulk salt?

A. We handle about a car every two months; about six or seven carloads a year.

Q. Very little of that is purchased from the Morton Salt Company?

1477 A. As far as I have knowledge, I don't think we bought any from the Morton Salt Company in the last few years. Practically all of that is purchased from the International Salt Company.

Q. What effect would it have upon your business if one of your competitors in your retail end of your business who sells salt in competition with your members direct to the consuming public, was purchasing Morton's round package blue label salt at $1.45 a case, while at the same time your company was purchasing it at $1.50 a case?

Mr. McBride: The usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. Witness may answer.

The Witness: Well, naturally, if they passed on the price to the consumer, it would almost prohibit us from selling at that much differential. Salt is a very close item, but if the price to the consumer was held up along with what the independents sell for, it would not affect us in that case, but if it was lower, and we had to sell higher, why, then it would affect us.

Trial Examiner Purcell: Now, let me have that answer read back, Mr. Reporter.

(The answer referred to was read by the reporter.)

By Mr. Haslett:

Q. What do you mean by a "very close item"?

1478 A. Well, I was thinking of profit margin.

Q. Profit margin is close?

A. Yes.

Q. How close is it, sir, if you know?

A. Well, say we pay $1.50 a case for that one pound package, and sell it for $1.65 delivered, then the retail

stores sell it for $1.20, it costs them about 8½-cents delivered and they get 10-cents, they make a little better margin on it than the wholesale house does. I am speaking of our own stores there now, the independent stores, we sell them at the same price. Of course, they may cut the price down to 9-cents, if they wish.

Q. If your company was in the position of purchasing it at $1.35 a case, the margin wouldn't be so close, would it, sir?

Mr. McBride: I object to that question, my usual objection.

Trial Examiner Purcell: Mr. Haslett, there is an objection made.

Mr. Haslett: I think it is the same objection, isn't it?

Mr. McBride: Let me have the question back.

(The question referred to was read by the reporter.)

Mr. McBride: I might observe, Mr. Examiner, further in support of my objection here, his question in terms
1479 of margin. I would like to make my objection on that basis, the same as with respect to the profit question that I have brought up before.

Mr. Haslett: When I say "margin", I mean margin of profit.

Trial Examiner Purcell: Does that satisfy you, Mr. McBride?

Mr. McBride: Then, that cinches the reason for my secondary objection. Mr. Haslett says he is using it in terms of margin of profit. That being true, then I would distinctly want my objection shown to the question for that reason. We have again the same discussion, the same reason that we have had before on profit, involved in counsel's question.

Mr. Haslett: This has been before the Examiner on several occasions. The Examiner has ruled on it heretofore.

Trial Examiner Purcell: I ruled with you the last time. I will have to overrule the objection, Mr. McBride, and I will allow you an exception, sir.

The Witness: Would you state the question again?

Mr. Haslett: Read the question back, Mr. Reporter, please.

(The question referred to was re-read by the reporter.)

1480 The Witness: The margin would be about the same. We base our sales price on the cost, and whether it costs us $1 or $5, we would add so much a case.

By Mr. Haslett:

Q. Would your sale price be reduced so much in accordance with your purchase price?

A. Yes.

Q. So that the margin, then, would be about the same?

A. Yes, sir.

Q. But the sale price would be different?

A. That is right.

Q. It would be lower?

A. That is right.

Mr. Haslett: I think that is all, sir. I have no further questions.

Cross-Examination by Mr. McBride.

Q. Mr. Sales, I am not sure whether you testified as to the number of stores connected with your company?

A. We have 20.

Q. Twenty?

A. Twenty retail stores and a wholesale house, 21 altogether.

Q. And the wholesale house is the one that is located in Asheville?

1481 A. Yes.

Q. Now, with reference particularly to the wholesale house, does it carry all types of commodities in addition to groceries, or does it carry groceries only?

A. It carries poultry, and eggs and country produce, potatoes, and produce that is grown on the farm, considerable of that in addition to groceries.

Q. And by "groceries," you have reference to what they call dry—

A. What we call staple groceries.

Q. And these stores that are operated, as I understand it, the owner of the store has a share or a vote in the Farmers' Federation, is that right?

A. He is a stockholder. It is made up of shares sold to farmers. That furnishes the capital, and the managers are employed that operate the stores. The buying is done in Asheville, and a suggested price list is given to the man-

ager, and he has authority to change that up or down to meet competition.

Q. Now, these retail stores, then, do they handle anything other than groceries, poultry and the items you have enumerated?

A. Yes, they handle all kinds of farm supplies, fertilizer, seed, insecticides, roofing, farm implements, groceries, work clothes; nearly anything the farmer buys, mill supplies.

1482 Q. So, it is almost equivalent of the general store in a small community, who service the farmer's needs from one season to the other, is that it?

A. That is right.

Q. These stores are located in relatively small towns, are they?

A. Some of them are in towns and some of them are in the country. Mostly, on railroad sidings, so that we can unload heavy merchandise directly from the tracks.

Q. Now, how many of those stores, of the 20 stores you have referred to, would be in a country location on a railroad siding?

A. Well, let's see, let me study just a moment. I believe, four are outside of any small towns and the rest of them are in small towns.

Q. And those towns have a population of 1,000 or 1,500, perhaps?

A. That and over, some of them.

Q. In the retail trade that is enjoyed by your retail outlets, is the principal factor the farm trade?

A. The principal factor?

Q. Yes. In other words, are the principal customers of your retail stores farmers themselves?

A. Yes, sir.

Q. Now, is it correct, Mr. Sales, that by and large,
1483 the farmers will purchase bulk salt probably once or twice a year for their supply?

A. They purchase more in the fall around hog killing time, but they purchase some all the year, like block salt, and also bulk salt for cattle, through the summer.

Q. So that by far the biggest percentage or demand for salt in your retail outlets would be for that type of salt, rather than the blue package salt?

A. That is true.

Q. I believe you testified, also, that the wholesale house

at Asheville offered its commodities to the general retail trade?

A. Yes, sir.

Q. Now, is that true of all commodities?

A. Yes, sir.

Q. Including your poultry and your other types of produce?

A. Yes, sir.

Q. What would be the percentage of the business which your wholesale unit does with its retail outlets in comparison with the total business in any given year? In other words, does your retail outlets purchase 70 or 80 per cent of the business during a given year?

A. I would have to estimate that. I would say about 60 per cent outside of our own stores, and about 40 per cent with our own stores.

1484 Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: I have no further questions of Mr. Sales.

(Witness excused.)

Trial Examiner Purcell: Next witness.

Mr. Haslett: Mr. Groves.

JOHN ALEXANDER GROVES was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you please state your full name for the record, Mr. Groves?

A. John Alexander Groves.

Q. And where do you reside, sir?

A. Asheville.

Q. North Carolina?

A. Yes, sir.

Q. And in what business are you engaged?

A. Wholesale groceries.

Q. With what company are you connected?

A. J. A. Groves Grocery Company.

Q. J. A. Groves Grocery Company?

A. Yes, sir.

1485 Q. And where is that located, sir?

A. Asheville.
Q. And is it a corporation?
A. No, sir.
Q. What position do you hold with the company?
A. General manager, I reckon; I own the business.
Q. You own the whole business, sir?
A. Yes, sir.
Q. You are the sole owner?
A. Yes, sir.
Q. What is the business of the J. A. Groves Grocery Company?
A. Wholesale groceries and food.
Q. It sells groceries and allied products to the retailer stores?
A. Yes, sir.
Q. And would you tell us what territory is covered by your company in Asheville?
A. We work about five counties, about 40 or 50 miles away from Asheville, just around Asheville.
Q. Within a radius of 40 to 50 miles of Asheville?
A. Yes, sir.
Q. Does your company have any competitors?
A. Plenty of them.
Q. Would you name a few of them for us, sir?
A. C. D. Kenny, Thomas & Howard, Overton, Ebbs
1486 Brothers, Slade & Fakes, Farmers' Federation—did I name Thomas & Howard?
Q. Yes, sir, you named that one.
A. Morgan-Burke Grocery Company, and there are quite a few more.
Q. Do you compete with any wholesalers who operate out of Greenville?
A. Yes.
Q. Could you name some of those, sir?
A. Thomas & Howard.
Q. Out of Greenville, I say?
A. Yes, and also Thomas & Howard out of Hickory.
Q. Is Hickory in North Carolina?
A. Yes, sir.
Q. Do you compete with Lipscomb-Russell?
A. No, sir, not that I know of.
Q. What about Mr. Turner, do you compete with Mr. Turner?
A. Yes, in a small way. He works a small part of the territory we work.

Q. Is Charles Moody Company a competitor of yours?
A. I wouldn't think so.
Q. You don't come in contact with him as a competitor at all?
A. No, sir, he is in Charlotte and I am in Asheville, a good long ways apart.
1487 Q. How far is Charlotte from Asheville?
A. 123 miles.
Q. Does your company purchase or handle salt?
A. It does.
Q. Does it make any purchases from the Morton Salt Company?
A. Yes.
Q. Does it also purchase from the other companies?
A. Yes, sir.
Q. How long has your company been purchasing from the Morton Salt Company?
A. Probably 20 years, I don't know, but a long time.
Q. It has been a long time?
A. Yes, sir.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. Round. Well, we have purchased all types from meat salt to 100 pound bags, not many, in a small way. You see, they work the trade—I will explain it to you—they work the trade and sell salt for us, and we purchase some salt to fill those orders.
Q. They work the trade for you?
A. Not especially for me, they work it open, for all jobbers, I imagine.
Q. That is the retail trade?
A. Yes, the retail work.
1488 Q. Do you purchase any round package blue label free running and iodized salt?
A. Yes, but I haven't bought any more from Morton in probably two years.
Q. You haven't bought any direct from Morton in the last two years?
A. No, sir.
Q. Does Morton's salesman or broker solicit your company for orders for round package blue label free running and iodized salt?
A. Yes, sir.
Q. They do, sir?
A. Yes, sir.

Q. And how are you billed for that salt?

A. We have been billed through Charles Moody in Charlotte.

Q. Charles Moody in Charlotte bills you direct for that salt?

A. Yes.

Q. And you place the orders with the Morton Salt representative?

A. Yes, sir.

Q. Do you know approximately the dollar volume of business done by your company with the Morton Salt Company?

A. It is not very large; I wouldn't know.

Q. Do you know approximately?

1489 A. Probably $500 to $1,000 a year, something like that.

Q. $500 to $1,000 a year?

A. Yes, sir. I wouldn't know exactly.

Q. Do you know the price that you are now paying for the round package free running and iodized salt per case?

A. I do.

Q. What is that, sir?

A. $1.42 a case.

Q. $1.42 a case?

A. Yes, sir.

Q. Prior to the time that you began to receive your requirements of salt from the Charles Moody Company, did you purchase salt direct from the Morton Salt Company?

A. I did.

Q. And that was up to two years ago, is that correct, sir?

A. Yes, sir, I think I can tell you exactly. I think I have the bills right here, but it was virtually about two years ago. I don't have all the bills, but it was virtually about two years ago, though. I haven't any invoices that go back that far. Of course, I didn't bring them all. I just have a few. Here is one January 21, 1941, from Charles Moody. I only have two from Charles Moody with me.

Q. Do you know the price at which your company was paying the Morton Salt Company for its round package salt prior to the time that you began to purchase from the Charles Moody Company?

1490 A. Yes, I do.

Q. What price was that, sir?

A. $1.50.

Q. $1.50?
A. Yes, sir.
Q. Why did you begin to purchase through the Charles Moody Company?
A. I could buy it for less.
Q. Do you mean to say that you could buy it for less from Charles Moody Company than you could from the Morton Salt Company?
A. I could.
Q. And that was the sole reason for the switching of the business?
A. Absolutely.
Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's exhibit No. 123-A and B.
(The documents referred to were marked "Commission's Exhibit 123-A and 123-B" for identification.)

By Mr. Haslett:

Q. Mr. Groves, I hand you what has been marked for identification as Commission's exhibit 123, and ask you to state what that is, if you know, sir?
1491 A. This is an invoice from Charles Moody Company, Charlotte, North Carolina.
Q. Is it a photostat of an invoice?
A. Yes.
Q. Has it a date, sir?
A. 1-5-42.
Q. And who was the purchaser?
A. J. A. Groves, Asheville.
Q. Now, will you turn to the next document, and describe that, if you can, sir?
A. This is a delivery order from Charles M. Britt Company, brokers, at Asheville, North Carolina. It is a delivery of 10 cases of 36/24's table salt; in other words, free running table salt, I imagine it is, and four cases of 24's, 26 ounce Morton's free running, and 45 cases of 24's 26 ounce iodized.
Q. And has it a number, sir?
A. Yes, No. 4398.
Q. And has it a date, sir?
A. 2-11-42.
Trial Examiner Purcell: Let me see that, Mr. Haslett, so that I can get some sort of a description of it.
Mr. Haslett: Yes, sir.
Trial Examiner Purcell: Very well.

Mr. Haslett: I offer the documents, Mr. Examiner,
1492 Trial Examiner Purcell: Any objection?
Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked by the reporter as Commission's Exhibit No. 123-A and B.

(The documents referred to were heretofore marked for identification "COMMISSION'S EXHIBIT 123-A and 123-B" and received in evidence.)

By Mr. Haslett:

Q. Mr. Groves, I again hand you Commission's exhibit No. 123, and ask you to state whether or not that document is typical of invoices passing between Charles Moody & Company and J. A. Groves Company for the sale of Morton's free running and Morton's iodized salt?

A. It is.

Mr. Haslett: Mr. Reporter, I hand you another document and will ask that it be marked for identification as Commission's exhibit No. 124.

(The document referred to was marked "Commission's Exhibit 124" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit 124 is a
1493 true and correct photostat copy of an invoice from the Morton Salt Company, numbered 81537, of commodities sold to J. A. Groves Grocery Company of Asheville, North Carolina, under date of November 21, 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received into evidence and marked by the reporter as Commission's exhibit No. 124.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 124" was received in evidence.)

By Mr. Haslett:

Q. Mr. Groves, what is the price at which your company charges to its customers for its round package salt?

A. $1.65.

Q. $1.65 per case?

A. Yes, sir, and we will meet competition at $1.60 when it becomes necessary.

Q. Why do you do that, sir?

A. We have competitors that sell it for $1.60, and it is absolutely necessary that we meet it at certain times.

Q. Why do you meet it?

1494 A. It is either meet it or lose the business.

Q. You either meet it or lose the business?

A. Yes, sir.

Q. And you meet it?

A. Yes, sir.

Q. Do you know whether or not you have ever lost any customers to any of your competitors because of your competitors quoting such customers a lower price for Morton's round package blue label salt?

A. I don't know that I have lost customers, but I have actually lost some business.

Q. You have lost some business?

A. I have lost some business. In other words, when I was paying $1.50 for salt, it was impossible for me to meet $1.60. That would be too small a margin to haul salt on.

Q. What do you mean by "it would be too small a margin"?

A. A dime a case is too small to haul salt from cars and unload it in the warehouse and send it out and deliver it maybe 40 or 50 miles, and also charge it and carry the account. The mark-up is too small to handle it on a dime a case profit.

Q. Now, when you sell it at $1.60, you are making 18-cents a case, is that right?

A. That is right, 18-cents.

Mr. McBride: Mr. Examiner, I make my objection
1495 to that question as to what the witness is making on the case, again on the profit angle of it, and I should like to make this objection specific, in as much as the Examiner, on the last two times it has been raised, has now overruled my objections, whereas before, as I understood it, my objection was being sustained where the element of

profit entered into counsel's question. I don't wish this to be in the form of a complaint as to the inconsistent rulings, but I want you to know that I am making my same objection on the same grounds, notwithstanding what I take it as a reversal of ruling.

Trial Examiner Purcell: It is true that the last two rulings I made on that particular question were different from the ones I made originally, but if I remember correctly there were some different elements in the question as originally put, and the objection to the question. I don't just recall what the details were, but I think at that time Mr. Haslett accepted your suggestions and receded from his position in the use of the word "profit," and later gave same good reason why his position was correct, and with which I held with him.

It would seem to me offhand that the testimony of the witness would speak for itself. He has testified what he paid for the goods and what he is selling it at, and it is a mere matter of arithmeical computation to see what his possible profit would be.

1496 I realize, of course, Mr. McBride, your position, and in the matter of profits, strictly speaking, there are a great many elements that enter into that, such as overhead, and peculiar conditions of competition, and so forth, but I think the connection with which Mr. Haslett has used this word "profit," I am going to summate my reasons now, so that it will not be constantly recurring.

In a broad sense, that is the spread between what it costs, what the product costs, and what it sells for, and with that in mind, I am going to permit him to use the word "profit" for want of a better word. I am going to allow you your exception, and if you wish it, I will give you a continuing exception, as I did in other instances, Mr. McBride.

Mr. McBride: May I make one further statement on the record?

Trial Examiner Purcell: You may, sir.

Mr. McBride: I take it, the records will speak for themselves as to this witness or any other witness as to what he pays and what he sells for, because I have no idea what is necessarily in counsel for the Commission's mind when he does try to describe that differential, as we used it one time as a "profit" or a "margin." I must insist upon the objection, and I will note my objection to the use of the word "profit" or "margin" as it is used in conjunction with this

type of testimony, for the reasons given now and in
1497 past hearings.

Trial Examiner Purcell: Of course, you have open to you on cross-examination the opportunity to break down the witness' testimony as to whether it is profit or as to what the margin of profit may be, and not simply to rest solely on your objection and let it go at that and argue upon appeal. I think it is your duty to undertake to bring from this witness such material as you may in order to substantiate your objection.

Mr. Mc Bride: Of course, my position on that is, that I shouldn't have to be pressed on cross-examination, or any other, because of the fact that my view to the Examiner's ruling is to the contrary on the position the Examiner takes.

Trial Examiner Purcell: That is perfectly true, Mr. McBride. I realize that thoroughly, and at the same time some adverse interests may be broad. You do as you may be best advised, sir.

By Mr. Haslett:

Q. Is the price which your company pays for its requirements of salt an important factor in your business, Mr. Groves?

A. As much so as any other commodity.

Q. And is the price which your competitors sell the products for given consideration by your company in determining the price at which it sells its products?

A. To a certain extent.

1498 Q. Mr. Groves, I hand you Commission's exhibit 124, and ask you to state whether or not you received any discount on the purchases as represented thereon?

A. I did not.

Q. What effect would it have upon your business, Mr. Mr. Groves, if one of your competitors was receiving a discount amounting to approximately 5 per cent on the commodities as shown on Commission's exhibit 124 off of the list price as shown thereon?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: I couldn't stay in business if all the other of my competitors had a 5-cent better price than I had, I could not operate.

By Mr. Haslett:

Q. What effect would it have upon your business if one of your competitors was purchasing salt at $1.35 a case, while at the same time you were paying $1.42 a case for the same type of commodity?

Mr. McBride: My usual objection.

Trial Examiner Purcell: Objection overruled. The witness may answer.

The Witness: I couldn't meet competition. In other words, if all of the commodities were sold on that basis, I couldn't operate.

1499 By Mr. Haslett:

Q. Then does it have an adverse effect upon your business?

A. It certainly does.

Q. Since 1936, if you can recall, sir, have you purchased any salt from the Morton Salt Company on a carload basis, buying a full car?

A. No, sir, I don't think I have. Most of our salt we sell is 36 one and one-half's in bags, and Morton's have a car coming about once a month, and we get our requirements of just fill-ins during the month.

Q. Where is the car put when it arrives in Asheville?

A. Charles M. Britt's Brokerage Company.

Q. When it arrives in Asheville, it is put on the siding of Charles M. Britt?

A. Yes, and they call us and we send our trucks and pick it up.

Q. Are you compensated by the Morton Salt Company for hauling this product from the car to your warehouse?

A. I am not.

Q. Do you operate any other warehouses than—

A. I do not.

Trial Examiner Purcell: Mr. Witness, please allow counsel to finish his question before you undertake to answer it.

The Witness: Pardon me.

1500 By Mr. Haslett:

Q. You don't operate any other warehouse other than the one at Asheville, is that correct, sir?

A. I do not.

Q. What effect would it have upon your business if one

of your competitors were selling Morton's round package salt to your customers at $1.58 a case, while at the same time you were charging $1.60 a case for it, sir?

A. I would be ashamed to offer it.

Q. Would it have an adverse effect upon your business?

A. It would.

Q. Do you compete with Thomas & Howard out of Charlotte, sir?

A. When we can. Sometimes they have a better price on commodities than we do.

Q. Out of Charlotte?

A. Yes. No, wait a minute. Thomas & Howard out of Charlotte? Wait a minute, Thomas & Howard don't come in out of Charlotte?

Q. It does not, sir?

A. No, not in my territory.

Q. Do you compete with them out of Greenville?

A. Out of Greenville and Hickory.

Q. Have there been cases where Thomas & Howard had a better price on Morton's round package salt than
1501 the price that your company was charging, sir?

A. I don't think they have sold it for less than $1.60, not that I have heard of.

Q. Has there been occasions when C. D. Kenny Company sold it for less than $1.60 a case, if you know, sir?

A. Not that I know of.

Q. Does your company purchase salt from other processors of salt?

A. It does.

Q. Is the International Salt Company one of them, sir?

A. Yes, in a small way.

Q. In a small way?

A. Yes, sir.

Q. Jefferson Island is one of them, sir?

A. Yes, in a small way. We get most of it from the Ohio Salt Company.

Q. The Ohio Salt Company?

A. Yes, sir.

Q. Does your company do any promotional work in connection with the resale of Morton's products through the retailer stores?

A. Nothing more than we do on any other line. We offer it for sale.

Q. And you have their salesman calling upon you?

A. Yes, sir.

1502 Q. How many salesmen do you employ?

A. Three besides me. I work the trade on Mondays myself.

Q. Do you also call on the trade?

A. Yes, one day a week.

Q. You act as a salesman yourself?

A. Yes, sir.

Q. You solicit order for Morton's products?

A. Yes, sir.

Q. Will you state the cause of your changing your purchases of Morton's free running and iodized salt from the Morton Salt Company to the Charles Moody Company? How was that brought about?

A. Well, I think we have complained a number of times to our broker that we couldn't meet competition, and I think our broker asked us to buy it through Charles Moody in Charlotte. I believe it was the broker, Mr. Britt.

Q. Is Mr. Britt the broker for the Morton Salt Company?

A. Yes, sir.

Q. And that happened about two years ago, I believe you testified?

A. There about.

Q. Since that time, you have been purchasing through Charles Moody?

A. From Charles Moody, altogether. I mean, of the round package.

1503 Q. Did you ever get it for $1.40 from the Charles Moody Company?

A. We never did.

Q. It has always been $1.42?

A. $1.42.

Q. Do you know what discount the Charles Moody Company receives upon your purchases from the Morton Salt Company?

Mr. McBride: If the Examiner please, I object to that. The witness testified he purchased from the Charles Moody Company. The Charles Moody Company may or may not purchase from the Morton Salt Company, and I object to the question as counsel has framed it.

Mr. Haslett: I will reframe the question, Mr. Examiner.

Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. Do you know what percentage or discount that the Charles Moody Company receives upon the orders placed by you with Mr. Charles M. Britt for Morton's round package and free running salt?

Mr. McBride: Same objection.

Trial Examiner Purcell: Let him answer if he knows.

By Mr. Haslett:

Q. Do you know, sir?

1504 A. I can tell what I have been told. I haven't got it in black and white. I think they get a dime a case, is what I have been told.

Trial Examiner Purcell: Just one moment. By whom were you told this?

The Witness: By Mr. Britt, and I think probably some of the—in other words, they get a dime a case extra for buying so many cases.

Trial Examiner Purcell: Are you sure Mr. Britt told you?

The Witness: Yes, sir.

Trial Examiner Purcell: I will let the answer stand.

Mr. Haslett: Mr. Reporter, will you mark this document as Commission's exhibit for identification No. 125?

(The document referred to was marked "Commission's Exhibit 125" for identification.)

By Mr. Haslett:

Q. Mr. Groves, you have been handed by the reporter that has been marked for identification as Commission's exhibit No. 125. Will you state what that is, if you know, sir?

A. This is a delivery order where we picked up a number of cases of salt by one of my drivers, King.

Q. Has it a date, sir?

A. Yes, 11-27-41.

1505 Q. Has it a number?

A. 3870.

Q. And is it a delivery order from Charles M. Britt?

A. It is.

Q. And it is for commodities purchased from the Morton Salt Company?

A. Yes, sir.

Q. By the J. A. Groves Grocery Company?

A. Yes, sir.

Mr. Haslett: I offer the document into evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's exhibit No. 125.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 125" was received in evidence.)

Mr. Haslett: Will counsel state whether or not Charles M. Britt is a broker of the Morton Salt Company?

Mr. McBride: He is.

Mr. Haslett: In Asheville, North Carolina?

Mr. McBride: Yes, sir.

Mr. Haslett: I have no further questions to ask this witness, and I turn him over to Mr. McBride for cross-examination.

1506

Cross-Examination by Mr. McBride.

Q. Mr. Groves, I believe you stated that you had never lost any customers on the salt business, but you thought you might have lost some salt business. Is my recollection correct on that?

A. That is correct, yes.

Q. What particular type of salt do you recall that you lost some business on?

A. Round package.

Q. Round package?

A. Yes.

Q. When did this occur, Mr. Groves?

A. Well, on several occasions. Now, I work the trade myself, and I have a few stores that buy round package salt. I don't guess you want to hear all of this, but there is more of it sold in the cities and towns than there is in the country, and for some time they told me they were being sold for less than I sold it for, and I didn't try to meet competition, but after I began to buy for less than I was already paying, I met competition, and I likewise, up to that time—

Mr. McBride: Just one moment, please, Mr. Witness. If the Examiner please, we are pretty far afield

1507 with any question. I don't want to hamper the witness, but at the same time, I would like to ask that the question be re-read, so I can get some sense to it. I will have to ask that the answer be stricken as not responsive, and I would even like to have the question read over.

Trial Examiner Purcell: I am disposed to grant that, if it is acceptable to Mr. Haslett.

Mr. Haslett: It is not acceptable to me, and I think the answer is responsive to the question. I will ask the reporter to read the question and answer to you, and I am sure the Examiner will see that it is responsive.

Will the reporter please read the question and answer?

(The question and answer referred to was read by the reporter.)

Mr. Haslett: Mr. Examiner, I can't see anything wrong with that question, except one thing, except "I guess you don't want to hear all of this," but it is responsive to the question propounded by the learned counsel.

Trial Examiner Purcell: I don't know that there is anything wrong with that, "I suppose you don't want to hear all of this."

Mr. McBride: I asked the witness, as the Examiner will note, as to when those occasions were. I am perfectly willing to hear the witness' answer to that, and not a 1508 dissertation on small towns and large towns.

Trial Examiner Purcell: I will grant the motion to strike.

Now, Mr. Witness, when counsel propounds a question to you, try to be as brief as possible for the benefit of the record. On the other hand, if you feel that an explanation is due of any answer that you have to make, I will accord you the opportunity to do that.

Mr. Haslett: I assume I have my exception to the Examiner's ruling?

Trial Examiner Purcell: Yes, you have your exception.

Mr. McBride: Now, if the reporter will read the question again, please.

(The question referred to was re-read by the reporter.)

The Witness: I can only tell you on Mondays, is the only time I worked the trade, and it has been probably two years since I would meet competition.

By Mr. McBride:

Q. Well now, let me get it exactly, Mr. Groves. Will you specify the date on which you lost some business in the blue can?

A. I can't specify a date, because I wouldn't—

Q. You have no recollection of any particular

1509 dates?

A. I have no recollection of any particular dates. That is hard for me to remember.

Trial Examiner Purcell: Mr. Witness, please let counsel finish his question. The reporter can't possibly get the two of you at once.

The Witness: Excuse me.

By Mr. McBride:

Q. Can you specify the retail customers?

A. Yes, sir.

Q. What are their names?

A. Charlotte Street Grocery and Grace Supply Company.

Q. Where are they located, Mr. Groves?

A. Charlotte Street and Merriman Avenue.

Q. Is that in Asheville?

A. Yes.

Q. And the other one?

A. That is the only two.

Q. Oh, I see, and those are two separate street addresses?

A. Yes, two separate streets.

Q. And both of them are located in Asheville?

A. Yes, sir.

Q. How many cases were involved of the blue can, Mr. Groves?

A. They probably buy one case at a time, from one to five, but they only asked me for one.

Q. And on the occasions you recall, without re-

1510 membering the dates, something like one to five cases was involved, is that your recollection?

A. That is all.

Q. To whom did you lose that business, Mr. Groves?

A. To the two stores I just now mentioned.

Q. I say, to whom did you lose that business?

A. I really couldn't say about that.

Q. When you went in the store, you say that you lost

the business you would have otherwise have gotten on the blue can on those occasions?

A. Yes, I would have gotten it at the same price, $1.60.

Q. Now, let me see if I understand you. You were offering it at $1.60, is that correct?

A. I am now, but I wasn't at that time. I will sell it as low as $1.60. We get $1.65 as a rule, but if it becomes necessary, I will sell it for $1.60.

Q. In any event, when you went in, they said your price wasn't attractive, is that the idea?

A. I don't think they said that. In other words, "What have you got on Morton's salt?" I would say, "$1.65," and "I am only paying $1.60."

Q. They didn't tell you to whom?

A. I don't think I asked.

Q. And the same thing occurred in the other instance at the other store on the other street, is that right?

1511 A. Yes.

Q. Do you remember the date on the other store?

A. I remember no dates at all.

Q. Do you remember the quantity involved in the other store?

A. A small amount. They hardly ever buy over one to five cases. They probably would buy five, but I think one was all they really intended to buy.

Q. That would be true of both of those instances that you described?

A. Yes, sir.

Mr. McBride: I think that is all, Mr. Groves.

Redirect Examination by Mr. Haslett.

Q. Mr. Groves, you say you work the trade along with your other salesmen?

A. Occasionally, yes.

Q. And it was on Mondays that you would go out?

A. That was on Mondays.

Q. And the Charlotte Street grocery store that you have been testifying about, was that a customer of yours?

A. Yes, sir.

Q. And had it been a customer for a long time?

A. Probably 20 years.

Q. Now, when you quoted your price of $1.65 a
1512 case, what did the manager of the Charlotte grocery store say to you, sir?
A. I don't remember the exact words.
Q. Well, approximately?
A. In other words, "you are too high."
Q. And did you ask him the price?
A. Why, I said, "$1.65 is a good price," and he said, "$1.60."
Q. Did you then reduce the price of your salt?
A. I did not at that time, sir.
Q. You did not?
A. No, sir.
Q. So, you lost the business?
A. Yes, sir.
Q. You don't know who you lost it to?
A. No, sir, I couldn't tell you.
Q. And what is that other, the Grace Supply Company?
A. Yes.
Q. Were they a customer of yours?
A. Yes, sir.
Q. And had been for a long time?
A. Yes.
Q. And you say it has been a customer of your company for a long time, sir?
A. Yes, sir.
1513 Q. When you quoted them a price, what was the price you quoted?
A. $1.65.
Q And what did the manager say to you in regard to that price?
A. I can't remember the exact words.
Q. Approximately what did he say?
A. He said, "Can't you meet competition?", or something of that kind; "It sells for $1.60."
Q. Did you lower your price?
A. I couldn't at that time.
Q. Why couldn't you at that time, sir?
A. I was paying $1.50 for it.
Q. And it is only since the time that you have been getting it at $1.42 per case through the Charles Moody Company that you have lowered your price to $1.60?
A. Yes, sir.
Q. Are any retail stores associated with your company?

A. There are none.

Mr. Haslett: I think that is all. Any further questions, Mr. McBride?

Recross Examination by Mr. McBride.

Q. Mr. Groves, I think you said that one of these retailers had been your exclusive customer for 20 years?

1514 A. I did not.

Q. I am sorry, he had been a customer of yours for 20 years?

A. That is right.

Q. But not an exclusive customer?

A. Not exclusive, no, sir.

Q. Would that description be true of both of them, that they had been customers for 20 years?

A. That is right, probably 20 years, or a number of years.

Q. You don't have any exclusive customers, do you?

A. No, sir.

Q. In other words, these retailers are in the habit of shopping around on all items, is that correct?

A. That is right.

Q. And I take it you are not fortunate enough, as a wholesaler, always to be the lowest price quoter on all commodities, is that right?

A. No, sir.

Q. So that it is entirely within the realm of your experience that you may get new customers and lose old customers in various lines of commodities of all types from time to time, that is the nature of your wholesale business, is that right?

A. Yes, sir.

Mr. McBride: I think that is all.

1515 Mr. Haslett: That is all, thank you very much, Mr. Groves.

(Witness excused.)

Mr. Haslett: I will call Mr. Ebbs.

Trial Examiner Purcell: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: You may proceed.

PLATO DURHAM EBBS was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Please state your full name for the record, Mr. Ebbs?

A. Plato Durham Ebbs.

Q. And where do you reside, sir?

A. Asheville, North Carolina.

Q. And in what business are you engaged, sir?

A. I am in the wholesale grocery business.

Q. And with what company are you connected?

A. Ebbs Brothers.

Q. Is that a corporation, sir?

A. No, sir.

Q. It is a firm owned by you and your brothers?

1516 A. Me and one brother, two of us.

Q. You have a half interest, and your brother has a half interest?

A. Equal partners, yes.

Q. Now, what is the business of Ebbs Brothers?

A. Wholesale grocery business, and we also own the Jax Pax Stores, Inc.

Q. And are they retail stores?

A. Retail grocery stores.

Q. And under the name of Ebbs Brothers you operate a wholesale grocery business?

A. Under the name of Ebbs Brothers as a partnership, we operate a wholesale grocery business, and under Jax Pax Stores, Inc., which is a corporation owned jointly by he and I, we operate the Jax Pax Stores.

Q. Now, is it a North Carolina corporation?

A. Yes, sir.

Q. And the stock is owned jointly by you and your brother?

A. The stock is owned fifty-fifty by us, yes, sir.

Q. And what position do you hold in the corporation known as Jax Pax Stores?

A. I am president of the Jax Pax Stores.

Q. And the business of the Jax Pax Stores is selling retail groceries and allied products to the consuming public?

A. That is right, yes.

1517 Q. Now, has Ebbs Brothers any competitors?

A. Yes, sir.

Q. Would you please name some of those competitors that Ebbs Brothers have?

A. Well, we have Slade & Fakes Company, and J. A. Groves Grocery Company, Hendersonville Wholesale Grocery Company, C. C. Grigsby, Waynesville Grocery Company, at Waynesville, North Carolina, Springle-Shelton Company, at Marshall, North Carolina, and A. Blanton Grocery Company at Marion, North Carolina.

Q. Is the C. D. Kenny Company a competitor of yours?

A. C. D. Kenny at Asheville, North Carolina, yes, sir.

Q. And Thomas & Howard Company?

A. Thomas & Howard from Greenville come into some of the territory.

Q. Does Thomas & Howard of Hickory come in?

A. They come up as far as Black Mountain in our territory.

Q. Now, will you tell me what territory is covered by the Ebbs Brothers Company in the sale of its products?

A. Well, Ebbs Brothers covers Buncombe County, of course, that is Asheville, and Haywood County, Henderson County, Transylvania County, Yancey County, Madison County, and some of McDowell County.

Q. Now, does it have just one wholesale warehouse?

A. Yes.

1518 Q. And that is located in Asheville, North Carolina?

A. 99 Robins Street, Asheville, North Carolina.

Q. And where are the Jax Pax Stores located, sir?

A. There are eight of them in the city of Asheville proper, and one in the suburbs. We have one outside of the city, outside of the city limits.

Q. But it is close by?

A. It is in Asheville, but not in the city limits.

Q. So, you operate nine stores—

A. No, I meant seven in the city; we operate eight.

Q. Eight is the total number of stores?

A. That is right.

Q. And they are operated in and around Asheville, North Carolina?

A. That is right.

Q. They sell groceries to the consuming public?

A. That is correct.

Q. Now, will you name some of the competitors that you have in your retail field, some competitors of Jax Pax Stores?

A. Well, we have A & P, Dixie Home Stores, and the A. G. Stores, that is an organization, a big organization, that have a warehouse there.

Q. A. G. Stores?

A. Yes.

Q. Is that a member of any particular group, if
1519 you know, sir?

A. It is a member of some national group, but I forget just what they call it. They call them the A. G. Stores there, and the warehouse goes under the name of the Mutual Distributing Company.

Q. Now, does your company purchase or handle salt?

A. Yes, we do.

Q. Does it purchase salt from the Morton Salt Company?

A. Well, we purchase some from the Morton Salt Company.

Q. Do you purchase from other sources of supply, processors of salt?

A. Yes, we control the Diamond Crystal account there, and have for 20 years. That is our main salt account, the Diamond Crystal Salt Company.

Q. Mr. Ebbs, what type of salt does your company handle that is processed by the Morton Salt Company?

A. Well, I notice occasionally, I see come through where their salesman has sold different types of salt, probably sold it to someone through us, and billed by our concern, but the salt that we get from them largely is the round carton, I mean, the round can of Morton's free running salt.

Q. That is, free running and iodized?

A. That is right.

Q. What method and manner is employed by your company in obtaining its requirements of Morton's
1520 round package free running and iodized salt, sir?

A. Well, for probably the last year or two, our free running salt has been billed to us through Charles Moody at Charlotte, and delivered to us by the broker in Asheville, Charles M. Britt.

Q. I see, sir, and does Mr. Britt solicit orders from your company for the Morton Salt Company?

A. He does.

Q. And as a result of which, commodities are shipped to you from the Morton Salt Company, but are billed by the Charles Moody Company?

A. The invoice comes from Charles Moody Company, and we pick the salt up from Mr. Britt's warehouse, where the pool cars come in.

Q. Do you haul the salt from the warehouse?

A. We haul it ourselves.

Q. You don't receive any compensation from Morton for that service?

A. None whatever.

Q. Do you know approximately the dollar volume of the salt business placed with the salt company, or with Charles Moody Company, during a year's period?

A. It is no big amount, because practically all of it that we sell is sold there in the city, and we try to sell our own salt, you know, as much as possible. I
1521 wouldn't think that we place over $500 or $600 at the outside. I wouldn't think so, but I haven't seen the figures on it.

Q. Do you know the price at which your company is at the present time paying for its requirements of Morton's iodized salt and Morton's free running salt per case?

A. $1.42 per case.

Q. $1.42 per case?

A. That is right.

Q. Do you know the price at which it paid for its requirements of Morton's iodized and free running salt prior to the time it began to purchase through the Charles Moody Company?

A. $1.50 a case.

Q. At the time that you were purchasing direct from the Morton Salt Company, did you receive any discount or allowance from the Morton Salt Company upon your purchases?

A. None whatever.

Q. Why did you begin to purchase your requirements through Charles Moody Company of Charlotte, North Carolina?

A. Well, as I recall, from time to time we had complaints that other people were selling salt very much less than we were, and we probably complained to the broker there, Mr. Britt, I think is the way it come around, and we started getting our salt through the Charles Moody Com-

pany. In other words, I think he made the arrange-
1522 ments for us to have this salt billed by Moody.

Q. What was the reason for purchasing it through Moody Company?

A. To save 8-cents a case. That was my reason.

Q. In order to get the $1.42 price?

A. That is right.

Q. And for the past two years, you have been purchasing through Moody Company?

A. I think it is around two years, to the best of my knowledge.

Q. And you are at the present time?

A. Yes, sir.

Q. That is, you are purchasing salt from Moody at the present time, sir?

A. Yes.

Q. What is the price that you are charging for Morton's round package blue label free running and iodized salt per case to your customers?

A. We get $1.65 for it.

Q. What do you charge in your stores for that salt, sir?

A. I think the same price.

Q. It is $1.65 to your wholly owned Jax Pax Stores and $1.65—

A. It may be less, I don't know, but Mr. Warren is general manager there, and we have a set scale of prices,
1523 and I can't just recall correctly the amount we are selling it to them at.

Q. You have a general price of $1.65?

A. $1.65, yes.

Q. Do you know the price which you are charging per package through the Jax Pax Stores to the consumer?

A. I couldn't tell you. We meet whatever our competitors are selling for. Our price is always with them, I don't know what we are getting for it.

Q. You don't know of your own knowledge what the price is?

A. No, sir, I don't.

Q. Does your company purchase any other types of salt from the Morton Salt Company other than the round package free running and iodized salt?

A. Occasionally, as I just stated, some other kinds are probably sold to our customers by their salesman, and we buy the salt to cover it, like seasoning, I don't know what they call it, meat salt, I believe, and so on.

Q. You mean, the salesman of the Morton Salt Company solicits the trade for your company?

A. They very often turn us in some orders, yes.

Q. Then they turn those orders over to you for fulfillment?

A. That is right.

Q. Is that a general practice in the trade?

A. Oh, yes, I take it that it is, it has been going on 1524 for a long time.

Q. Mr. Charles M. Britt, is he the broker for the Morton Salt Company, if you know, sir?

A. Yes, sir.

Mr. Haslett: Mr. Porter, I hand you two documents and ask that they be marked for identification as Commission's exhibit No. 126-A and B.

(The documents referred to were marked "Commission's Exhibit 126-A and 126-B" for identification.)

Mr. Haslett: It is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit No. 126-A is a true and correct photostat copy of an invoice passing between Charles M[illegible]ly Company of Charlotte, North Carolina, under date of July 25, 1941, and Ebbs Brothers, of Asheville, North Carolina, for Morton's iodized salt; and Morton's free running salt.

Mr. McBride: That is correct.

Mr. Haslett: And that Commission's Exhibit 126-B is an order of the Charles M. Britt food broker and distributor, number 2575, dated August 2, 1941, of commodities delivered to Ebbs Brothers of Morton's iodized and Morton's free running salt, signed by Donald Case.

Mr. McBride: It is so stipulated.

Mr. Haslett: I offer the documents, Mr. Examiner.

1525 Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked by the reporter as Commission's exhibit 126-A and B.

(The documents referred to, heretofore marked for identification as "COMMISSION'S EXHIBIT 126-A and 126-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Ebbs, I hand you now Commission's exhibit 126-A and B, and ask you to state whether Commission's

Exhibit No. 126-A is typical of the invoices passing between Charles Moody Company and Ebbs Brothers of Asheville, North Carolina, for Morton's iodized and Morton's free running salt?

A. They are.

Q. And I will refer you to Commission's exhibit No. 126-B, and ask you to state whether that is typical of the delivery ticket of Morton's iodized and free running salt under the Charles M. Britt's delivery ticket?

A. It is.

Q. Now, Mr. Ebbs, is the price which your company pays for its requirements of salt an important factor in your business?

A. Well, I wouldn't say that Morton's salt is much of a factor, because as I say, we want to sell our own 1526 brand of salt and we are not anxious to sell it, and our salesmen know that.

Q. I wasn't particularly referring to Morton's salt. I am talking about all types of salt.

A. Of course, it is, yes, sir.

Q. Your answer would be "yes"?

A. My answer would be "yes."

Q. And is the price at which your competitors sell salt given consideration by your company in determining the price at which it sells its salt products?

A. In which we sell ours, do you mean?

Q. Yes.

A. Well, that is problematical, because we usually put a price on our merchandise and sell it for that price or not sell it at all.

Q. You don't meet competition?

A. We don't pay much attention to that. We try to run our own business and do it as near as safe a way as we can.

Q. What do you mean by "a safe way"?

A. I mean, we try to make enough margin of profit to carry our business, irrespective of what the other competitors are doing.

Q. Does the fact that some of your competitors receive a 15-cent discount per case on Morton's blue package free running and iodized salt, while at the same time you 1527 receive an 8-cent per case discount, affect your business in any way?

Mr. McBride: If the Examiner please, I object to that

on two grounds. First, on my usual grounds, and second, the injection of the phrase "while he receives an 8-cent discount." There is no such testimony in the record.

Mr. Haslett: I think the witness has testified he pays $1.42 a case for it, which is 8-cents off of the price usually charged by Morton Salt Company for its round package salt per case.

Trial Examiner Purcell: That is my understanding.

Mr. McBride: But that isn't Mr. Haslett's statement. He says, "An 8-cent discount." I am objecting to the statement of Mr. Haslett as to what that amounts to. Now, if he wants to put it in terms of $1.42 as his purchase price, then I will rely only on my usual objection.

Mr. Haslett: We have been using the word very freely that it is a discount heretofore.

Mr. McBride: Not in this manner. On the contrary, I think not.

Trial Examiner Purcell: Let us go off the record here.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. Mr. McBride, I am going to overrule your objection.

Mr. McBride: You are going to overrule it?

1528 Trial Examiner Purcell: Yes, on both the original grounds and the supplemental grounds. As to the original grounds for the reasons heretofore given, and on the supplemental grounds, I take it that the objection has no merit. Where the source of supply was originally obtained and is now obtained is the same, to-wit, the Morton Salt Company, and that the Charles Moody Company is merely a conduit for the Morton Salt Company in the matter of invoicing its products. You may have your exception, Mr. McBride.

Mr. Haslett: Mr. Reporter, would you read the question back to the witness, please?

(The question referred to was read by the reporter.)

Trial Examiner Purcell: You may answer, Mr. Witness.

The Witness: Well, naturally, if somebody else is buying goods cheaper than you are, it is not a healthy condition for you, but just to what extent, I don't know, because as I stated in the outset, we are very small dealers in it, it couldn't affect us much.

By Mr. Haslett:

Q. It would be an unhealthy condition, then, do you mean?

A. It would be a very unhealthy condition for a man to buy 15-cents a case cheaper than another.

Q. Well, what effect would it have upon your business if one of your competitors was purchasing it at $1.40
1529 per case, while at the same time you were paying $1.42 a case for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Oh, I don't see that that—of course, it might have some, but I can't see that it would be any big difference to us. If we were big handlers of the merchandise, it would, but being just small users of it, I couldn't see that it would affect us much.

By Mr. Haslett:

Q. Why did you begin the purchase of your requirements of Morton's free running and Morton's iodized salt through the Charles Moody Company?

A. Because, as I think I answered a few minutes ago, as I understand it, Mr. Britt brought us the news that we could take an invoice through Charles Moody Company for $1.42 instead of $1.50.

Q. Well, I think you did answer that, sir, but I want to know the reason for it. Was there any reason?

A. The reason was, we could buy it 8-cents a case cheaper, that is the main reason.

Q. You could buy it 8-cents a case cheaper?

A. Through Moody, yes.

Q. Through Charles Moody, than you could direct?

A. That is right.

1530 Q. Now, would the business of Jax Pax Stores be affected if one of the competitors of Jax Pax Stores began the sale of Morton's round package salt at a cent per package under the price that your stores were then charging for products of the same grade, quality and size?

A. It certainly would.

Q. Would it be an adverse effect?

A. Very adverse.

Q. I believe you stated that you sell salt under your own brand name?

A. Not under our own brand. We handle the Diamond Crystal Salt Company's account, which is different brands.

Q. I see, they have different brands?

A. Different brands.

Q. And you promote the sale of their brands?

A. That has been our account exclusively in the city there for 20 years.

Q. Why do you handle Morton's salt?

A. Well, because we have to, almost, you know. There is a certain demand for the round salt that makes it very desirable, and very necessary that we handle it, in our own stores, especially, retail stores.

Mr. Haslett: I think that is all, Mr. Ebbs. Any questions, Mr. McBride?

1531 *Cross-Examination by Mr. McBride.*

Q. Mr. Ebbs, I believe you testified that you didn't know the price at which your Jax Pax Stores were selling Morton's blue can, is that correct?

A That is correct. I don't keep up with the prices that they sell those items for.

Q. So that you don't know of your own knowledge whether or not any other retailer in Asheville is selling Morton's blue can under the price that your stores are offering it, is that right?

A. No, I do not.

Q. If I understand your statement correctly, it is the purpose of your wholesale house, primarily, as far as the salt business is concerned, to press the distribution of Diamond Crystal Salt to the exclusion of all other brands of salt, is that right?

A. That is true.

Q. That being so, in view of your exclusive handling of Diamond Crystal salt for some 20 years, you have never concerned yourself very much with the competitive picture of Morton's blue can, is that right?

A. Very little.

Q. The only time, primarily, where your company sells Morton's blue can is where orders come in that have been worked through the trade, rather than any sales work
1532 on your own part, is that right?

A. No, that is hardly true, because our salesmen sell it wherever it is asked for. Of course, our company as a policy wants Diamond Crystal salt sold, but our salesmen are aware that the fellow usually asks for and insists on getting it.

Q. If he can't sell Diamond Crystal salt?

A. That is correct.

Q. What type of stores do you operate under the name of Jax Pax, Mr. Ebbs?

A. Retail grocery stores and meat markets.

Q. What you would term as the conventional type or are they self-service stores?

A. Well, they are cash and carry, you know.

Q. I see.

A. And just open stores on the order of A&P and Dixie, and all of those.

Q. Cash and carry, and where the customer serves himself, is that right?

A. Well, they serve them, we have clerks, too, when they need them.

Q. I believe you testified also that you had some recollection that there were complaints about the price of Morton's blue can. I think you stated that, that some time ago you heard some complaints about the sale price which

1533 you had on Morton's blue can?

A. Oh, we hear that. I have heard that, I guess, a lot of times, but of course, I have paid very little attention to it, and of course, the salesmen are always jealous of competitors.

Q. You hear those type of complaints about all commodities?

A. They are always in talking to you about something that somebody is underselling them on, you see.

Q. One day it might be salt, and the next day a can of milk, and the next day meat, is that right?

A. That is correct, sir.

Q. You didn't have any specific inferences in mind when you made that statement, then, is that correct?

Mr. Haslett: Mr. Examiner, in order that the record may be clear, I am not objecting to this line of testimony, but it is beyond the scope of direct examination. I didn't bring out anything about complaints at all, but I have no objection if counsel wants to develop this line. I want the record to be clear that it was not brought out by the direct examination.

Mr. McBride: Off the record, if I may, Mr. Examiner.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Let's get back on the record. Go ahead.

1534 Mr. McBride: Mr. Reporter, will you read my last question, please?

(The question referred to was read by the reporter.)

The Witness: I didn't understand the question. I mean, it is not connected up.

By Mr. McBride:

Q. Let me reframe the question. The complaints which you testified to generally in your direct examination, did you have in mind any particular instances of complaints on Morton's blue can, or simply generally that you have received complaints on a lot of commodities from time to time from your salesmen?

A. Well, I will try to answer that, if I know how. We have, of course, had complaints as stated, by our men, on Morton's salt, and as you stated, of course, many other things, but as I stated on direct examination, our dealings in this matter were so small that it never was of any big concern to us what other people got for it.

Mr. McBride: I think that is all, Mr. Examiner.

Mr. Haslett: No further questions of Mr. Ebbs.

(Witness excused.)

Trial Examiner Purcell: Mr. McBride, do you want to make your request to withdraw certain exhibits?

Mr. McBride: Mr. Examiner, I should like to make my usual request for leave to withdraw Commission's

1535 exhibits numbers 115 to 126-B, inclusive, for the purpose of making photostats, the originals thereafter to be returned to the record.

Trial Examiner Purcell: Permission is granted.

1536 Court Room No. 322,
Federal Building,
Greenville, South Carolina,
Tuesday, May 19, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

1537 Mr. Haslett: Mr. Examiner, I would like for the record to show that Mr. J. F. Jamison, secretary of Thomas & Howard Company of Greenville, South Carolina, was subpoenaed as a witness for the Commission. Mr. Jamison contacted the Washington office of the Federal Trade Commission, as a result of which I called him on the telephone from Atlanta and made arrangements for him to appear as a witness in Charlotte, North Carolina, on next Monday morning instead of appearing here in Green-
1538 ville, South Carolina. This was due to the fact that Mr. Jamison was called out of the city and could not appear at this hearing.

Trial Examiner Purcell: Let the record so show, Mr. Reporter.

Call your first witness.

Mr. Haslett: Mr. Examiner, on yesterday I marked for identification what is now Commission's exhibit 122-B. It is a photostat copy of a check voucher of funds paid to the Dixie Home Stores by the Morton Salt Company upon purchases of the round package blue label salt. The photostat copy is very poor in the making, and I want to now substitute the original for the photostat copy, and withdraw the photostat copy known as Commission's exhibit 122-B.

Trial Examiner Purcell: Is that the $260 item on 2600 cases?

Mr. Haslett: That is right, sir.

Trial Examiner Purcell: Very well.

Mr. Haslett: I will ask the reporter, then, to mark the document that I hand him as Commission's exhibit No. 122-B.

Mr. McBride: I suppose, Mr. Examiner, I can note withdrawal of my objection as to the form of the exhibit?

Trial Examiner Purcell: Very well.

Mr. Haslett: I will call as the first witness for the Commission, Mr. R. E. Putnam, of the Lipscomb-
1539 Russell Company. I would like for the record to show that Mr. R. E. Putnam is appearing in place of Mr. Russell, president of the Lipscomb-Russell Company, and is appearing without a subpoena, since he did not bring along with him the subpoena duly served upon Mr. Russell.

ROY EUGENE PUTNAM was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Putnam?

A. R. E. Putnam, Roy Eugene Putnam.

Q. And do you reside in Greenville, South Carolina?

A. I do.

Q. In what business are you engaged?

A. I am connected with Lipscomb-Russell Company of this city.

Q. And what is the Lipscomb-Russell Company?

A. Wholesale grocers.

Q. Wholesale grocers?

A. That is right.

Q. And where are they located?

A. South Main Street.

1540 Q. Is that in the city of Greenville, South Carolina?

A. That is right.

Q. And what position do you hold with that company?

A. Buyer and salesman.

Q. Buyer and salesman?

A. That is right.

Q. And what is the business of the Lipscomb-Russell Company?

A. Buying and selling of merchandise, groceries and food supplies.

Q. Do they sell groceries and allied products to the retailer stores?

A. They do.

Q. And they obtain those groceries and allied products by purchasing them from various processors throughout the nation?

A. That is right.

Q. Is the Lipscomb-Russell Company a corporation?

A. It is.

Q. Incorporated under the laws of what state, sir?

A. South Carolina.

Q. And how long have you been connected with the company, sir?

A. Approximately 20 years.

Q. And how long have you been buyer?

1541 A. About four years.

Q. About four years?

A. Yes, sir.

Q. Prior to that time, what was your position with the company?

A. Salesman.

Q. And as a salesman, did you call upon the retail trade to solicit orders for various commodities that your company sold?

A. Yes, that is right.

Q. You will have to speak up so the reporter can hear you. He can't make a notation of your head nods.

A. All right.

Q. In what territory does the Lipscomb-Russell Company do business?

A. Do you want that by counties?

Q. No, is it within a radius of, say, 50 miles?

A. A radius of about 50 miles, yes.

Q. Does it have any retail stores connected with it, sir?

A. No.

Q. Has it any competitors?

A. Plenty.

Q. Would you name some of the competitors that Lipscomb-Russell Company have, sir?

A. Thomas & Howard, Cannon Wholesale Grocery,
1542 Moore Milling Company, R. P. Turner, Morris & Company, Spratt Grocery, Todd & Woolbright Grocery, Hartley Grocery, and that is all I can remember just now.

Q. Is the Dixie Home Stores a competitor of yours, sir?

A. Well, yes, they are.

Q. Do they sell commodities at wholesale?

A. Well, I couldn't say they do. Of course, they sell some of them to the wholesale trade, but they don't travel. C. D. Kenny, of course, have operated here some while, and they are competitors also.

Q. C. D. Kenny Company of this city is a competitor of yours?

A. That is right.

Q. Does your company purchase or handle salt?

A. They do.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Directly, common fine block salt, and package salt.

Q. And indirectly, what commodities do you handle that are processed by the Morton Salt Company?

A. Round iodized and plain package.

Q. And how does your company obtain the source of supply of the round package blue label salt?

1543 A. It is invoiced through Dixie Home Stores.

Q. Do the salesmen of the Morton Salt Company call upon your company and solicit orders for that particular type of commodity?

A. Yes.

Q. And do you give the orders to the salesman of the Morton Salt Company?

A. Some of them are placed with the salesman.

Q. Do you place any with the broker?

A. Yes.

Q. All orders are placed either with the salesman or the broker for your requirements of Morton's round package salt?

A. I think that is correct.

Q. And I believe you stated that you were invoiced by the Dixie Home Stores?

A. That is, on the round package.

Q. And the other packaged commodities are invoiced directly from the Morton Salt Company?

A. That is correct.

Q. Do you know approximately how many cases of Morton's round package salt that your company handles per year?

A. Well, that would vary from one year to another, because we didn't handle Morton's salt until the last few years.

Q. Do you know what the figures would be for 1940?

A. I can give you that. In 1942, the Morton's 1544 round package, 175 cases.

Q. And in 1941, sir?

A. 275 cases.

Q. 275 cases?

A. That is right.

Q. Prior to 1940, did you purchase the round package salt directly from the Morton Salt Company?

A. We did not.

Q. How long have you been placing your orders with the Morton Salt Company for the round package salt, and being invoiced by the Dixie Home Stores?

A. I believe, January, 1940, was the first invoice.

Q. Now, prior to that time, did you handle the round package salt?

A. We handled mostly other salt, round package, but not Morton's.

Q. But since you have been placing your orders with the Morton Salt Company, being invoiced by the Dixie Home Stores, you have been handling that round package salt, is that correct, sir?

A. That is correct.

Q. Do you know the price that your company is now paying for its round package salt, blue label, both free running and iodized?

A. Yes, it is paying net $1.40 a case for it.

1545. Q. $1.40 a case?

A. That is right.

Q. And do you know the price at which your company is selling that salt per case to its customers?

A. $1.65 is the list price.

Q. $1.65 a case?

A. That is right.

Q. And has that price been in effect for along time?

A. Since we have been buying Morton's round package salt from the same source that we purchase from at present.

Q. The $1.65 price has been in effect?

A. That is correct. May I state, also, in some instances, possibly, salt was sold at $1.60 in quantity lots, or for some special reason, to meet competition.

Q. And what do you mean by meeting competition?

A. Well, that is a price we have got to get into to get the business, and if a competitor has established a price or quoted a price, we don't feel like passing it up in every instance, and sometimes we take it at $1.60.

Q. I see. You reduce your price to meet that of your competitor?

A. That is right.

Q. Why do you reduce your price?

A. Well, we feel like we are in the same kind of business that he is, and we are entitled to sell that cus-
1546 tomer on the same basis he is entitled to sell him at.

Trial Examiner Purcell: May I have that question again?

(The question referred to was read by the reporter.)

Trial Examiner Purcell: May I have that question again?

(The question referred to was read by the reporter.)

Trial Examiner Purcell: When you say "he", who do you mean, sir?

The Witness: Any competitor that has quoted a price of $1.60.

By Mr. Haslett:

Q. I believe you stated that you purchase other types of salt from the Morton Salt Company?

A. That is right.

Q. Would you state what other types of salt you do purchase from the Morton Salt Company?

A. Fifty pound blocks of sulphurized and plain, Morton's 36/1¼ Kleer, 100 pound Kleer common fine, 25 pound Kleer common fine, and Morton's sugar cure salt.

Q. Does your company receive any discounts upon the purchases of these particular types of salt from the Morton Salt Company?

A. No.

Mr. Haslett: Mr. Reporter, I hand you herewith a document and ask that you mark it for identification as Commission's Exhibit No. 127.

1547 (The document referred to was marked "Commission's Exhibit 127" for identification.)

By Mr. Haslett:

Q. Mr. Putnam, I hand you what has been marked for identification as Commission's Exhibit 127, and ask you to state what that is, if you know, sir?

A. The item?

Q. No, sir, what document is it? Is it an invoice from the Dixie Home Stores?

A. It is an invoice from the Dixie Home Stores.

Q. Has it a number on it, sir?

A. 2549.

Q. And has it a date, sir?

A. Date, September 3, 1941.

Mr. Haslett: I offer the document in evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's Exhibit No. 127.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 127", was received in evidence.)

By Mr. Haslett:

Q. Mr. Putnam, I now hand you Commission's Ex-
1548 hibit 127, and ask you to state whether that invoice is typical of the invoice passed between the Dixie Home Stores and the Lipscomb-Russell Company, showing the purchases by the Lipscomb-Russell Company of Morton's round package salt?

A. It is.

Q. And the prices that appear thereon are the prices that have been in effect since the time that your company began the purchase of round package salt through the Dixie Home Stores?

A. That is correct.

Q. Why is it that your company purchases Morton's round package blue label free running and iodized salt through the Dixie Home Stores instead of being billed directly by the Morton Salt Company?

A. To secure a better price, and an advantage, so that we might be more competitive.

Q. Couldn't you buy Morton's round package salt from the Morton Salt Company at $1.40 a case?

A. No, I think not.

Q. Do you know the price which they charge when they bill it directly to you from their Chicago office?

A. I have never had an invoice from Morton on that type of salt, but my impression is it is 10-cents a case higher, $1.50.

Q. And that price is shown on Commission's Exhibit 127?

1549 A. That is right.

Q. The 10-cents that you receive on your cases is passed on to you by the Dixie Home Stores?

A. That is right.

Mr. Haslett: Mr. Reporter, please mark this document that I hand you as Commission's Exhibit No. 128 for identification.

(The document referred to was marked "Commission's Exhibit 128" for identification.)

By Mr. Haslett:

Q. Mr. Putnam, I hand you now what has been marked for identification as Commission's Exhibit No. 128, and ask you to state what that is, if you know, sir?

A. Invoice from the Morton Salt Company.

Q. Has it a number, sir?

A. No. 53233.

Trial Examiner Purcell: Number what?

Mr. Haslett: No. 53233.

By Mr. Haslett:

Q. Has it a date, sir?

A. Dated July 3, 1941.

Q. And was the commodity sold to your company, Lipscomb-Russell Company?

A. It was.

Q. By the Morton Salt Company?

1550 A. It was.

Mr. Haslett: I offer the document, Mr. Examiner, for the typewritten and printed matter that appears thereon, and not for any penciled notations.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's Exhibit No. 128.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 128", was received in evidence.)

By Mr. Haslett:

Q. I hand you now Commission's Exhibit 128, and ask you to state whether or not your company received any discount from the Morton Salt Company off the list price of the commodities that appear thereon?

A. No, they do not.

Q. Does your company make any purchases from the Morton Salt Company on a carload basis, buy a full car?

A. They have not.

Q. How does your company obtain its supply of Morton's salt? Does it come in pool cars?

A. That is correct, pool cars.

Q. And where is the car placed? Is it placed on your siding?

1551 A. No.

Q. Where is it placed?

A. Either the broker's, or Dixie Home Stores.

Q. And does your company call for the commodities at the siding where the car is placed, and haul them from such siding to your warehouse?

A. We do.

Q. In your own trucks?

A. That is right.

Q. Are you compensated by the Morton Salt Company for that service?

A. No.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Repeat that, please.

Q. Is the price that your company pays for its requirements of salt an important factor in your business?

A. It is, very important.

Q. And is the price which your competitor sells its salt products for given consideration by your company in determining the price at which it sells its products?

A. Yes.

Q. What effect would it have upon your business if one

of your competitors sold to your customers, or offered to sell to your customers, Morton's round package blue
1552 label salt at $1.60 a case, while at the same time you were charging $1.65 a case for it?

A. Did you say what effect would it have?

Q. What effect would it have on your business?

A. Well, if they were able to secure sufficient profit for themselves, which I considered wasn't justifiable in charging that, naturally I would discontinue the product. We couldn't compete if it was sold at a price we thought wasn't sufficient to carry on our business.

Q. I believe you misunderstood me, Mr. Putnam. If one of your competitors offered to sell to one of your customers, a retailer, Morton's salt at $1.60 a case, while at the same time you were selling it at $1.65 a case, would that in any way affect your business?

A. It would affect it if I were unable to meet their price.

Q. Well, you would either have to meet it or lose it, is that it?

A. Meet it or lose the business, that is correct.

Q. What effect would it have upon your business if one of your competitors was purchasing Morton's salt at $1.35 a case, while at the same time you were purchasing it, the same salt of the same type, at $1.40 a case?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

By Mr. Haslett:

1553 Q. You may answer, sir.

A. That would put us in a very embarrassing position in meeting competition. We would be able to operate successfully on as small a margin of profit as our competitor, which we think we are entitled to, because we pay the invoices and other items that are necessary to carry on the wholesale grocery business.

Q. You think you are entitled to the same treatment as your competitor gets, is that it?

A. Why, certainly.

Q. Do you feel that your competitor would be placed in a favorable position if he purchased the commodity at 5-cents less per case than you were paying for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Most favorably.

By Mr. Haslett:

Q. What effect would it have upon your business if one of your competitors was purchasing Kleer fine salt of the same type as that represented on Commission's Exhibit 128, at 5-cents a case less than the price which you were paying for it, sir?

Mr. McBride: My usual objection.

Trial Examiner Purcell: Objection overruled.

The Witness: It would naturally put us in a posi-
1554 tion that we couldn't compete only in a very small way, that we might pick up on small orders from customers that possibly didn't pay their bills as well as some of the rest of them.

By Mr. Haslett:

Q. And if a competitor of yours was receiving a discount which amounted to approximately 5 per cent off of the list price on all commodities purchased, all salt commodities purchased by him from the Morton Salt Company, would that in any way affect your business?

Mr. McBride: Same objection.

Trial Examiner Purcell: Objection overruled. The witness may answer.

The Witness: That is on salt, is it?

By Mr. Haslett:

Q. Yes, all types of salt. If he was buying it at less than you were paying for it, would that in any way affect your business?

A. The profit on salt is very small, and it would.

Q. Does your company do any promotional or missionary work in connection with the resale of Morton's round package salt to the retailer customers?

A. By that you mean Morton's representatives?

Q. No, I was wondering if your company did any special promotional work trying to increase the sale of Morton's products to the retailer customers?

1555 A. No.

Q. Does the representative of the Morton Salt Company solicit business for your company?

A. This business, I understand is solicited on an open basis, let the orders drop where they will, or authorized by the purchaser to be shipped through what jobber he wants it shipped through.

Q. Do you mean by that, Mr. Putnam, when the salesman of the Morton Salt Company contacts your customers and also your competitors' customers, that it is up to the customer to designate who will be the source of supply for his particular requirements?

A. Yes.

Q. Am I correct when I state that the only reason that you purchase your requirements through the Dixie Home Stores of the round package salt is in order to get the 10-cent discount that you could not otherwise get from the Morton Salt Company?

A. That is right.

Q. Mr. Putnam, I hand you Commission's Exhibit numbered 128, and ask you to state whether that is typical of invoices passed between the Morton Salt Company and the Lipscomb-Russell Company for the type of commodities that are shown thereon?

A. Yes.

1556 Mr. Haslett: I think that is all, Mr. McBride, your witness.

Cross-Examination by Mr. McBride.

Q. Mr. Putnam, how many salesmen does your company employ?

A. We have eight salesmen. Those salesmen, however, are divided four on the grocery end and four on the notions end, or drygoods.

Q. Then, your company does a mixed wholesale business, part on notions and part on groceries, is that correct?

A. Yes, that is correct.

Q. And of the eight salesmen, only four of them make this territory in a radius of 50 miles on the grocery items?

A. Yes.

Q. And in making the territory, they solicit orders for the entire grocery line that your company handles, is that right?

A. They endeavor to solicit orders, the four grocery salesmen.

Q. Have you had approximately that same arrangement on your operations for the past three or four years?

A. Yes.

Q. In other words, the past three or four years, you

have had four salesmen devoting their entire time to the grocery end of your business?

1557 A. Yes.

Q. Your method of operation hasn't changed in any substantial degree during the past three or four years?

A. No.

Q. I believe you stated, Mr. Putnam, that your purchases of Morton's blue can for the year 1940 amounted to 175 cases?

A. That is the record I have.

Q. And your record shows 275 cases for 1941, is that correct?

A. That is correct.

Q. Do you know anybody within the 50 mile radius of the territory which your company covers, on its grocery line, which purchases salt, Morton's blue can salt, for $1.35 a case?

A. I have understood, possibly, that some company in this territory possibly bought it at that price. I have no definite information to that effect.

Q. In other words, it is only a matter of rumor, as far as you are concerned, is that right?

A. Yes, sir.

Q. Do you know of anybody in your territory, Mr. Putnam, who purchases all salt commodities at approximately 5 per cent less on the list price than your company purchases all of its salt commodities for?

1558 Trial Examiner Purcell: Do you mean from the Morton Salt Company?

Mr. McBride: I am taking counsel for the Commission's question. He said all salt commodities.

Mr. Haslett: I think I limited it to the Morton Salt Company.

Trial Examiner Purcell: I am quite sure you did.

Mr. McBride: On the contrary, Mr. Examiner, he put it in terms of all salt commodities.

Trial Examiner Purcell: The reason I say that, because in the past he has always used the words "Morton Salt Company".

Mr. McBride: I am perfectly willing to limit it to the Morton Salt Company. Let me reframe the question.

By Mr. McBride:

Q. Do you know of anybody in the territory covered by your company on its grocery items which purchases all of its salt commodities from the Morton Salt Company at approximately 5 per cent less than the list price that you purchase them for from the Morton Salt Company?

A. No definite evidence to that effect.

Q. In other words, again, as with respect to the previous question, it is simply a matter of rumor, so far as you are concerned, is that right?

A. The rumor is effected by a price that is put
1559 out by the competitors, which we were unable to sell at a profit, yes.

Q. Now, your list price is $1.65 on the blue can, isn't that correct?

A. That is correct.

Q. And occasionally, you say you will make a price of $1.60?

A. That is right.

Q. And in working your price arrangement on that basis, your sales have increased from 175 cases of the blue can in 1940 to 275 cases in 1941, isn't that correct?

A. That is correct.

Q. So that actually you don't know whether you have ever lost any business on Morton's blue can to anybody supposedly paying $1.35 a case for Morton's blue can, is that right?

A. Not definitely, no.

Q. And you don't know of your own knowledge of having lost any business on any other salt commodities aside from the blue can purchased from the Morton Salt Company, to anybody supposedly paying 5 per cent list price less than you were paying for those other Morton Salt commodities?

A. Well, we have had some pretty stiff competition, and we thought possibly there was some arrangement there that we weren't getting, whereby we could not compete with the prices offered.

Q. But you don't know definitely of having lost
1560 any business to any supposed competitor of your like that, is that right?

A. No, we have passed up some business by reason of competitors' prices.

Q. As far as you know, the fact that one of your

competitors might have a cheaper resale price to the retail than you have, would not necessarily indicate that he was buying it cheaper than you, is that correct?

A. That is correct.

Q. As I understand the wholesale grocery business, on salt or any other commodity, there are a number of different prices on the same type of goods, same quality and quantity in any line when you are competing for the same retail business, isn't that right?

A. That is practically true.

Q. That is true of salt, peas, potatoes, or anything else?

A. That is right.

Q. And I take it your company isn't fortunate enough to have the lowest price on all grocery commodities at the same time, is that right?

A. Would you repeat that, please?

Mr. McBride: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: No.

By Mr. McBride:

1561 Q. You may be high on some item, low on others, and about the same on still others, is that the way it operates?

A. That is correct.

Q. What price do you sell the Kleer one and one-half pound package for, with respect to which you testified?

A. The present price?

Q. The present price, yes.

A. Ninety-cents.

Q. Ninety-cents?

A. In some few instances, 85-cents, a little under cost.

Q. Now, with respect to your Kleer package, that Kleer package is directly in competition with similar packages produced by other salt companies, isn't that correct?

A. Yes, sir.

Q. Could you name some of the packages in which it is in competition?

A. You mean, the manufacturer of the salt?

Q. That is right.

A. International Myles Salt Company, Jefferson Island. I think that is sufficient.

Q. So that the price on your Kleer one and a half pound packages may well be governed to some degree by

the competitive packages put out by other salt companies, is that right?

A. Yes.

Q. On Commission's Exhibit No. 127, Mr. Putnam;
1562 which I believe was an invoice from the Dixie Home Stores to your company?

A. That is correct.

Q. That invoice was paid by your company to Dixie Home Stores?

A. Yes, sir.

Mr. McBride: I believe that is all, Mr. Examiner.

Mr. Haslett: I have a few more questions.

Redirect Examination by Mr. Haslett.

Q. Mr. Putnam, I believe you mentioned that C. D. Kenny Company was a competitor of yours?

A. C. D. Kenny Company is a competitor of ours, yes, sir.

Q. You don't know the price that C. D. Kenny Company is paying for its salt requirements from the Morton Salt Company, do you, sir?

A. No, I can't tell you what they are paying for it.

Q. Thomas & Howard are competitors of yours?

A. They are.

Q. You don't know the price which they are paying for it, do you, sir?

A. I do not.

Q. You don't know whether it is lower or higher?

Mr. McBride: I object to that question, Mr. Examiner.

1563 Trial Examiner Purcell: He said he didn't know. Objection sustained.

By Mr. Haslett:

Q. If it had been testified in this hearing that it was lower than the price which you were paying for your salt requirements from the Morton Salt Company, you wouldn't say that was wrong, would you, sir?

Mr. McBride: Mr. Examiner, I quite obviously object to that question. I don't know of any manner whereby counsel can inform the witness speculatively or otherwise.

Mr. Haslett: I am not informing him, I am just saying if it had been testified that it was lower, he wouldn't

say that was wrong. I am not informing this witness at all.

Trial Examiner Purcell: I don't think his opinion on that subject is worth anything in this case. I will uphold the objection.

By Mr. Haslett:

Q. If C. D. Kenny Company were paying $1.35 for that salt, round package salt, per case, and you were paying $1.40, your business would be adversely affected, would it not, sir?

Mr. McBride: I object to that question, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: It would be.

1564 By Mr. Haslett:

Q. If Thomas & Howard were purchasing salt at a discount equal to approximately 5 per cent on all of its requirements of salt which it purchases from the Morton Salt Company, that would adversely affect your business, would it not, sir?

Mr. McBride: I object to that question, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Would you say that C. D. Kenny Company is one of your principal competitors?

A. At the present time, C. D. Kenny is not operating very heavily in this territory. It has been, and has withdrawn to some extent. It is, I understand, coming back in a pretty big way, and they are pretty tough competition, I will put it that way.

Q. How about Thomas & Howard, would you consider them a principal competitor of the Lipscomb-Russell Company?

A. Yes.

Q. What type of competition are they? Are they tough competition?

A. Yes.

Mr. Haslett: I think that is all, Mr. Examiner.

Trial Examiner Purcell: Any recross?

1565 *Recross-Examination by Mr. McBride.*

Q. Mr. Putnam, I think you stated that C. D. Kenny is not now doing business in Greenville?

A. No, sir, I didn't say that. C. D. Kenny Company, I understand, withdrew most of the grocery items except specialty items, tea, coffee, and those items, and I understand are coming back with a full line of groceries on a competitive basis.

Q. They still have a house here in Greenville?

A. They do.

Q. But they only handle those three staple items?

A. Well, there are other items, possibly cocoa, and some other items that go in with the line that they have continued here.

Q. But they don't handle salt currently, is that right?

A. Possibly so, recently, because they have become more active, and I am satisfied that they do handle salt at the present time.

Q. Was there a period when they didn't handle salt, as far as you know?

A. I think so.

Q. Approximately when did that period start, about two years ago, approximately?

A. Approximately 12 months ago.

1566 Q. About 12 months ago?

A. Yes, sir.

Q. And since that time, until very recently, at least, they have not handled any salt items, as far as you know, out of the Greenville house here?

A. Yes, that is correct.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. You say they are coming back pretty strong now, Mr. Putnam?

A. That is my information, that they have broadened out some in the grocery field other than what they did handle a few months back.

Mr. Haslett: I think that is all, Mr. Examiner.

(Witness excused.)

Trial Examiner Purcell: Call your next witness.

Mr. Haslett: Mr. Roddey will be my next witness.

W. L. RODDEY was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record Mr. Roddey?

1567 A. W. L. Roddey.

Q. And where do you reside, sir?

A. At Greenwood, South Carolina.

Q. And in what business are you engaged, sir?

A. In the wholesale grocery business.

Q. And how long have you been in the wholesale grocery business?

A. About seven years.

Q. And with what company are you connected, sir?

A. The Rose-Phillips Company.

Q. And where is the Rose-Phillips Company located?

A. At Greenwood.

Q. Is that in the state of South Carolina?

A. South Carolina.

Q. And what is the business of the Rose-Phillips Company?

A. It is to furnish the retail grocery stores of Greenwood and Greenwood County and the adjoining counties with various staple and fancy groceries.

Q. And what position do you hold with the company, sir?

A. President and manager.

Q. And how long have you been president?

A. Since my connection with the firm, approximately seven years ago.

Q. And you have had general supervision of the entire company?

1568 A. That is correct.

Q. And do you do the purchasing for the company, also?

A. I do.

Q. Is it a corporation?

A. It is.

Q. And under the laws of what state was it incorporated?

A. South Carolina.

Q. Could you state geographically the territory covered by your company?

A. Approximately a radius of 35 to 40 miles; about 35 miles, I think, would cover it.

Q. Around Greenwood?

A. Around the city of Greenwood.

Q. How far is Greenwood from Greenville?

A. Fifty-two miles.

Q. Has your company any competitors?

A. Plenty.

Q. Would you name some of those, please, sir?

A. Thomas & Howard, Spratt Grocery Company, Hartley Grocery Company, C. D. Kenny Company, Augusta Grocery Company, Merchants Grocery, Thornton Grocery Company, Dexter Grocery Company, and there are a few more.

Q. Is Thomas & Howard one of your competitors?

A. Yes.

Q. From what city do you encounter the competi-
1569 tion of Thomas & Howard? Where is their warehouse located?

A. Mainly from Newberry.

Q. Newberry, South Carolina?

A. That is correct.

Q. Do you encounter the competition from the corporation here in Greenville?

A. Yes, and also from Spartanburg.

Q. From Spartanburg?

A. That is right.

Q. Does your company have any retail stores associated with it?

A. It has not.

Q. It sells only at wholesale?

A. That is correct.

Q. Does your company handle salt?

A. It does.

Q. Does it make any purchases from the Morton Salt Company?

A. It does.

Q. And from other processors of salt, also?

A. Yes, sir.

Q. How are your orders placed with the Morton Salt Company for its requirements?

A. How are my orders placed?

Q. With the Morton Salt Company for its requirements of salt?

1570 A. Well, I purchase my bulk salt and my square package Kleer salt directly from the Morton Salt Company.

Q. Does the salesman call upon you?

A. He does.

Q. Does the broker call upon you?

A. The broker, also.

Q. What is the name of the broker?

A. Britt-McKinney Company.

Q. Out of Greenville?

A. Out of Greenville.

Q. What is the name of the salesman?

A. I think the salesman that used to work it for them is in the Army now, from Morton's. Offhand, I just don't remember his name. He was there last week, too.

Trial Examiner Purcell: Keep your voice up, please, Mr. Roddey.

By Mr. Haslett:

Q. But a salesman from the Morton Salt Company does call upon you?

A. Yes.

Q. Now, does he also solicit from your company, orders for round package blue label salt?

A. He does.

Q. And as a result of those orders, commodities are shipped to you by the Morton Salt Company?

1571 A. That is correct.

Q. And how are they shipped to you, in cars?

A. In cars.

Q. Are they pool cars?

A. No, they are full cars.

Q. Full cars of salt?

A. Yes. On occasions, I will get some round package in a pool car in Greenville, and haul it to Greenwood by my trucks, but in the last year or so the round package is included in my regular car from the Morton Salt Company, but billed to me by Dixie Stores, but it comes in a regular car from the Morton Salt Company.

Q. How long has the arrangement been in effect whereby you are billed by the Dixie Home Stores for your requirements of Morton's round package blue label free running and iodized salt?

A. I am not certain, but I would say around two and a half or three years, that is just a guess.

Q. Prior to that time, were you billed directly from the Morton Salt Company for the round package salt?

A. I was.

Q. Do you know the price, at the time before you began to be billed through the Dixie Home Stores, that your company paid for its round package salt per case?

A. $1.50, as I remember.

1572 Q. And since you are being billed through the Dixie Home Stores, what price are you paying for it?

A. $1.40.

Q. $1.40 a case?

A. Yes, sir.

Q. Why did you begin to change your method of payment to the Morton Salt Company from a direct basis to paying the Dixie Home Stores?

A. Well, Thomas & Howard was about to eat me up on it, and naturally it was affecting my other business. If I went into a merchant and asked him $1.70 for Morton's round package salt, and Thomas & Howard came along and offered it for $1.60, why that merchant, he would say, "What have you got, Roddey, that you can sell in competition with these other gentlemen? Have you got anything that is reasonable?" and it affected my other business, not only the business that I had lost on the Morton round package, but I don't mind saying that the competition with the round package before I had this hurt my other business bad.

Q. I see, so your other business was affected by the fact that you couldn't compete when you weren't getting the 10-cent lower price?

A. That is correct.

Q. You now pay $1.40, I believe, from the Dixie Home Stores?

1573 A. That is what I paid for the last shipment, but I have been advised by Dixie that they will have to ask 2 cents for billing and their services.

Q. So, hereafter you are going to pay $1.42 a case for it?

A. That is correct.

Q. But up to the present time, you are just paying $1.40 a case?

A. That is correct.

Q. Prior to the time that you were billed through the

Dixie Home Stores for the round package, you paid $1.50 a case?

A. That is correct.

Q. Does your company receive any discount from the Morton Salt Company upon its purchases of other types of salt other than the round package salt?

A. It does not.

Q. Does it receive any carload discount on its purchases on a carload basis?

A. It does not.

Q. You pay the carload price?

A. That is correct.

Q. Or you pay the price that is billed to you by the Morton Salt Company?

A. That is correct.

Q. What is the price that you now sell Morton's 1574 round package salt to your retailer customers for?

A. Anywhere from $1.70 to $1.60, depending on competition and the quantity.

Q. What do you mean by "competition"?

A. Well, if Thomas & Howard offers salt to a customer at $1.60, I have got to offer it to him at $1.60, also, because not only would I lose the salt order, but I would lose other business.

Q. You feel that you are forced to meet that price?

A. That is correct.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that you mark it for identification as Commission's exhibit 129.

(The document referred to was marked "Commission's Exhibit 129" for identification.)

By Mr. Haslett:

Q. Mr. Roddey, I hand you what has been marked for identification as Commission's exhibit No. 129, and ask you to state what that is, if you know, sir?

A. It is an invoice from the Morton Salt Company to the Rose-Phillips Company.

Q. Has it a number on it, sir?

A. Numbered 29558.

Q. Has it a date, sir?

A. It is dated January 8, 1938.

1575 Trial Examiner Purcell: January 8, 1938?

Mr. Haslett: Yes, sir. I offer the document into evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received into evidence and marked by the reporter as Commission's Exhibit 129.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 129" was received in evidence.)

By Mr. Haslett:

Q. Mr. Roddey, I hand you now Commission's Exhibit 129, and ask you to state whether or not your company received a discount amounting to approximately 5 per cent off of list price, due to the fact that that exhibit, known as Commission's Exhibit 129, represents the purchase of a full carload of salt?

A. We received no discount at all.

Q. Prior to the time that your requirements of Morton's free running and iodized salt was billed to you through the Dixie Home Stores, did you request the Morton Salt Company to allow to your company a discount of 10 cents per case on its free running and iodized salt?

A. I did.

Q. And did the Morton Salt Company acquiesce 1576 in that request?

A. They refused.

Q. Did you at any time take the discount off the invoice price of any invoice payable to the Morton Salt Company?

A. I did.

Q. And was that also refused by the Morton Salt Company?

A. It was refused.

Q. Did they state to you why it was refused, sir?

A. Well, the argument with Morton's officials that I had over a period of three or four months, it has been such a good while ago, I don't know, but if I remember, I think they said that at that time Thomas & Howard was not getting that discount any more. I was told that on a number of occasions.

Mr. McBride: If the Examiner please, I am sorry, but I will have to interrupt. Now, we are getting a lot of vague statements. If counsel wants to find out who said what, and when, all well and good, but I must object to a ques-

tion that is now eliciting an answer by way of memory, vague statements, and without any identity whatsoever.

Trial Examiner Purcell: There is no objection, of course, to counsel's question. It is the answer of the witness?

Mr. McBride: That is correct, it is unresponsive to the question.

Trial Examiner Purcell: I will quite agree with
1577 you. The witness will have to be more specific.

Mr. McBride: I ask that the answer as given be stricken.

Trial Examiner Purcell: Motion to strike is granted.

Mr. Haslett: Will you read the question again, Mr. Reporter?

(The question referred to was read by the reporter.)

By Mr. Haslett:

Q. Will you state the conversation, if you had any, with officials of the Morton Salt Company, or any representative of the Morton Salt Company?

A. I had many conversations with them, with their supervisor.

Q. Do you recall his name, sir?

A. Mr. Flynn.

Q. Mr. Flynn?

A. Yes, and their broker.

Q. Mr. Britt?

A. Mr. Britt. I am not sure it was this particular occasion, but I distinctly remember, not on one occasion, but on two occasions, where Mr. Britt, the broker, told me that the Morton Salt Company was not giving discounts to Thomas & Howard any more. Now, on the strength of that statement, I bought Morton's salt—

1578 Mr. McBride: If the Examiner please, I must interrupt once more. I have not objected until this witness launches into this second deviation, unresponsive to the question. It was directed only to the conversations regarding reasons for not giving this discount.

Trial Examiner Purcell: Do you have anything to say to that, Mr. Haslett?

Mr. Haslett: Mr. Examiner, the witness is trying to answer the question, and if, based upon the statements made to him by duly authorized agents of the Morton Salt Company, he has done particular things, I think it is perfectly relevant, and we should have it in the record.

Mr. McBride: Generally speaking, that is true, possibly,

but here I am even permitting the first part of this witness, in his answer, to go on without an identity as to dates. He has finally identified the person, but not the occasion. I have been rather lenient with respect to the form in which the conversation was stated, but now we are getting into a different sort of statement, as to why he did something else, which has no bearing at all on the question.

Trial Examiner Purcell: Didn't you state for the record yesterday, at the direct solicitation of Mr. Haslett, that Mr. Joseph Britt was the broker for the Morton Salt Company?

1579 Mr. McBride: That was with respect to Mr. Charles Britt in Asheville.

Trial Examiner Purcell: He testified here in Greenville.

Mr. McBride: No, Mr. Joseph Britt testified here. I am not saying Joseph Britt isn't the broker of the Morton Salt Company.

Trial Examiner Purcell: Well, if he was the representative of the Morton Salt Company and he made certain representations to this witness regarding the dealings of the Morton Salt Company with someone actively in competition with this witness, as a result of which this witness was induced by such representation to resume the purchase of Morton's salt, I think it is material, and I will have to overrule your objection. The answer stands as far as is recorded up to the interruption by Mr. McBride, and the witness may continue along this line of testimony.

Please read it back and give the witness his connection, Mr. Reporter.

(The answer referred to was read by the reporter.)

The Witness: (Continuing)—Morton Salt Company, to wake up about 60 days later to find that Thomas & Howard were selling it to the retail trade at what I was paying for it from the Morton Salt Company.

By Mr. Haslett:

1580 Q. And you mentioned the name of Mr. Flynn?

A. Yes, sir.

Q. He is the representative of the Morton Salt Company?

A. That is correct, sir.

Q. Do you know what position he holds with the Morton Salt Company?

A. He holds a very responsible position. I believe he

is from the Washington office, I am not sure, but I know he is a responsible officer of the Morton Salt Company.

Mr. McBride: I ask that that answer be stricken, Mr. Examiner, except in so far as he testified he is from the Washington office. The witness obviously doesn't know whether he is an officer of the company, or what his capacity is.

Trial Examiner Purcell: I think that Mr. Haslett will agree to that.

Mr. Haslett: I will, if counsel will state just what position Mr. Flynn holds with the company.

Mr. McBride: I have no objection to that. He is sales manager of the Washington, D. C., office. I simply want to clarify the record as to officership.

Trial Examiner Purcell: Let it be so recorded.

Proceed, gentlemen.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commis-
1581 sion's Exhibit No. 130.

(The document referred to was marked "Commission's Exhibit 130" for identification.)

Trial Examiner Purcell: We will take a short recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over. Please come to order.

By Mr. Haslett:

Q. Mr. Roddey, I hand you a document that has been marked for identification as Commission's Exhibit No. 130, and ask you to describe what that is, sir.

A. It is an invoice from the Morton Salt Company to Rose-Phillips Company for a car of salt. The number of the invoice is 94732, and it is dated June 23, 1937.

Q. The pencil and ink notations that appear thereon were put on by your company in the regular course of its business?

A. That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's Exhibit No. 130.

1582 (The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 130" and received in evidence.)

By Mr. Haslett:

Q. Mr. Roddey, now, I again hand you Commission's Exhibit No. 130, and ask you to state whether or not the Rose-Phillips Company attempted to deduct from the invoice price an amount equal to 10-cents per case on Morton's iodized salt and free running salt, on the document known as Commission's Exhibit No. 130?

A. We did.

Q. Were you successful in that attempt, sir?

A. We were not.

Trial Examiner Purcell: Does the witness intend to testify that in making perhaps a remittance to the Morton Salt Company, he attempted a deduction and enclosed that invoice, and the Morton Salt Company returned that invoice to him and refused to permit the deduction?

Mr. Haslett: I am going to bring that out right now, Mr. Examiner.

Trial Examiner Purcell: I beg your pardon. I thought you were through with that line of testimony in regard to that piece of evidence. I am sorry.

By Mr. Haslett:

Q. When you made your offer of payment for the 1583 invoice as represented by Commission's Exhibit No. 130, did the Morton Salt Company return to you your check in payment thereof?

A. As I remember, they did.

Q. Did they also return to you the invoice which is known as Commission's Exhibit No. 130, sir?

A. The invoice always stayed in my office.

Q. I see.

A. All I do is write the number of the invoice and the date on my checks.

Q. And when you made your offer of payment on the invoice known as Commission's Exhibit No. 130, such check was returned to the Rose-Phillips Company by the Morton Salt Company?

A. That is correct.

Q. And refused?

A. That is correct.

Q. Does the Rose-Phillips Company receive any discounts whatsoever of any kind, type or form, or rebates of any kind, or allowances from the Morton Salt Company upon the purchases by the Rose-Phillips Company, as represented by Commission's Exhibit No. 130, sir?

A. No discounts or allowances whatsoever.

Mr. Haslett: Mr. Reporter, will you mark the document that I hand you as Commission's Exhibit for identification No. 131?

1584 (The document referred to was marked "Commission's Exhibit 131" for identification.)

By Mr. Haslett:

Q. Mr. Roddey, I hand you Commission's Exhibit No. 131 for identification, and ask you to state what that is, if you know, sir?

A. It is an invoice from the Morton Salt Company to Rose-Phillips Company, numbered 9952, dated October 1, 1937, for a car of salt.

Mr. Haslett: I offer the document into evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the document described will be received in evidence and marked by the reporter as Commission's Exhibit No. 131.

(The document referred to, herefore marked for identification "COMMISSION'S EXHIBIT 131," was received in evidence.)

By Mr. Haslett:

Q. Mr. Roddey, will you state whether or not the Rose-Phillips Company received from the Morton Salt Company any discount, rebate or allowance of any kind upon the purchases as represented by Commission's Exhibit No. 131?

A. No discounts or allowances of any kind were received.

Q. Is the round package blue label salt that your company handles at the present time, the only type of
1585 salt that you have billed to you through the Dixie Home Stores?

A. That is correct.

Q. All other types of salt that you purchase from the Morton Salt Company are billed to you direct from the Morton Salt Company?

A. Right.

Q. Do you purchase from other processors of salt, other than the Morton Salt Company?

A. Yes.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Very important.

Q. And is the price at which your competitor sells its salt given consideration by your company in determining the price at which it sells its salt products?

A. Yes.

Q. Prior to the time that you began to receive invoices from the Dixie Home Stores upon your purchases of the round package salt, would your business have been affected in any way by the fact that some of your competitors were purchasing salt at $1.40 a case, while at the same time you were paying $1.50 a case for salt of the same type, grade and quality?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

1586. The Witness: My business was tremendously affected.

By Mr. Haslett:

Q. Now, since the time that you are being invoiced through the Dixie Home Stores, would your business be affected by the fact that some of your competitors were purchasing Morton's salt at $1.35 a case, while at the same time you were paying $1.40 a case for it, sir?

Mr. McBride: My usual objection.

Trial Examiner Purcell: Objection overruled.

The Witness: Yes, it would be affected, and it wouldn't surprise me if it wasn't true, but I can't prove it.

Mr. McBride: I ask that the answer be stricken after the word "and," leaving my usual objection to the question.

Trial Examiner Purcell: Let it be stricken.

By Mr. Haslett:

Q. What effect would it have upon your business if one of your competitors, prior to the time that you were being supplied with your requirements of Morton's salt through the Dixie Home Stores, was selling salt to your customers at $1.50 a case, while at the same time you were selling the salt at $1.70 a case?

A. Of course, my salt business would be affected, but all of my other business would suffer, also.

1587 Q. Why it that, sir?

A. Well, I might say that the generally accepted rule in the wholesale grocery business is this: If you are

out of line on one particular item, why, it hurts all of your business, because it puts this doubt in the merchant mind; "Well, if he is out of line on this, maybe he is out of line on something else," and all of your business is affected.

Q. I see, sir. What effect would it have on your business if one of your competitors were selling it at $1.60, while at the same time you were selling it at $1.70?

A. The same would be true. I might say to you that back in the days of those invoices, 1937, and back in there, when I was not getting this discount, that Thomas & Howard on occasions did sell the round package to certain of my customers at $1.50.

Q. At $1.50?

A. That is correct.

Q. Which was your cost?

A. That is right.

Q. Did you have any correspondence with the Morton Salt Company in regard to the refusal by that Company to make available to you the 10-cent discount that it was granting to your competitors?

A. Yes, sir.

Q. Did you ever receive any reply from the Mor-
1588 ton Salt Company as a result of the correspondence?

A. I am not sure. I think most of the letters were answered by their broker, or Mr. Flynn, or the salesman who happened to be working that territory at that particular time.

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's Exhibit No. 132-A and B.

(The documents referred to were marked "Commission's Exhibit 132-A and 132-B" for identification.)

By Mr. Haslett:

Q. Mr. Roddey, I hand you what has been marked for identification as Commission's Exhibit No. 132-A, and ask you to state what that is, if you know, sir?

A. That is an invoice from the Morton Salt Company, No. 97035, to the Rose-Phillips Company for a car of salt, dated September 17, 1940.

Q. What is the document marked for identification as Commission's Exhibit No. 132-B?

A. It looks like the original bill of lading for this car.

Q. For the car as represented on Commission's Exhibit No. 132-A?

A. That is correct.

Q. Has it a date, sir?

A. Yes, September 17, 1940.

1589 Q. Has it a weight on the bill of lading, sir?

A. Yes, 51,541 pounds.

Mr. Haslett: I offer the two documents into evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's exhibit No. 132-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 132-A AND 132-B" was received in evidence.)

By Mr. Haslett:

Q. Mr. Roddey, did the Rose-Phillips pay the freight on the car of salt as represented on Commission's exhibit 132-A and B?

A. They did.

Q. And in that car of salt, was there some Morton's iodized salt, free running salt?

A. That is correct.

Q. And did Rose-Phillips pay the freight on those two items?

A Apparently we did.

Q. Was the car put on the siding of the Rose-Phillips Company in Greenwood?

1590 A. It was. Mr. Haslett, on that last question, if I paid the freight on that round package, it cost me more than I thought I was paying for it, didn't it?

Mr. McBride: Mr. Examiner, again, I must ask that that be stricken. In the first place, it is a question by the witness. In the second place, it has no bearing on the previous question. I don't believe that the record is the appropriate place for side comments of the witness.

Trial Examiner Purcell: Let's go off the record a second.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

Mr. McBride, motion to strike is granted. The entire voluntary statement of the witness will be stricken.

By Mr. Haslett:

Q. Mr. Roddey, I now hand you Commission's exhibit No. 132-B, and ask you to state whether or not the Rose-Phillips paid the freight on the entire bill of lading as represented by Commission's exhibit No. 132-B?

A. We paid the full freight on this car of salt, as set out on the freight bill given to us by the Seaboard Railroad.

Q. Then, you did pay the freight on the round package salt that appears on the freight bill, is that correct, sir?

The Witness: Your honor, may I say something off the record?

1591 Trial Examiner Purcell: No, sir, you will have to respond to counsel's questions.

The Witness: May I ask you a question?

Trial Examiner Purcell: No, sir.

By Mr. Haslett:

Q. Do you know whether or not your company paid the entire freight bill as represented by Commission's exhibit 132-B?

A. We did.

Mr. Haslett: Mr. Reporter, I hand you a document and ask you to mark it for identification as Commission's exhibit No. 133.

(The document referred to was marked "Commission's Exhibit 133" for identification.)

By Mr. Haslett:

Q. Mr. Roddey, I hand you what has been marked for identification as Commission's exhibit No. 133, and ask you to state what that is, sir?

A. That is an invoice from the Dixie Home Stores to the Rose-Phillips Company, No. 19240, dated September 10, 1941.

Mr. Haslett: I offer the document in evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's exhibit No. 133.

1592 (The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 133" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you now a document and ask that it be marked for identification as Commission's exhibit 134.

(The document referred to was marked "Commission's Exhibit 134" for identification.)

By Mr. Haslett:

Q. Mr. Roddey, I hand you what has been marked for identification as Commission's exhibit No. 134, and ask you to describe that, if you can, sir?

A. It is an invoice from the Dixie Home Stores to the Rose-Phillips Company, No. 5461, dated September 23, 1940.

Mr. Haslett: I offer this document into evidence, Mr. Examiner, that is, Commission's exhibit No. 134 for identification.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Commission's exhibit No. 134.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 134" was received in evidence.)

By Mr. Haslett:

1593 Q. Mr. Roddey, what effect would it have upon your business if one of your competitors was receiving a discount amounting to approximately 5 per cent off the list price of commodities shown on Commission's exhibit No. 131, while at the same time you were paying the price as represented thereon?

Mr. McBride: The usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: It would have a very injurious effect.

By Mr. Haslett:

Q. Mr. Roddey, do you purchase, 5,000 cases of Morton's free running and iodized salt per year?

A. I do not.

Q. Do you know approximately how many cases you purchase per year, sir?

A. I would say approximately 400 to 500 cases a year.

Q. And do you receive the 10-cent discount on such purchases through the Dixie Home Stores?

A. I do.

Q. Will you state, please, sir, what the reason was for

the switching of the purchases from a direct basis from the Morton Salt Company to receiving the invoices from the Dixie Home Stores?

A. Of course, the real reason was to allow me to compete with Thomas & Howard.

1594 Q. And to get the 10-cent discount?

A. That is correct.

Mr. Haslett: I think that is all, Mr. Examiner. I have no further questions at this time, and I will turn him over to Mr. McBride for cross-examination.

Cross-Examination by Mr. McBride.

Q. Mr. Roddey, I believe you stated that you had been the president and buyer for Rose-Phillips Company for the past seven years?

A. That is correct.

Q. How many salesmen does Rose-Phillips employ?

A. It employs three. I might qualify that by saying that one man works all the time, and the other two work two days a week.

Q. Those three men on that basis constitute the entire sales staff of your company?

A. That is correct.

Q. Now, have you had approximately that arrangement during the entire years of your presidency?

A. No, at one time I had three full time salesmen.

Q. I see. How big a radius does your company cover out of Greenwood in terms of miles, 50 miles, a 40 mile radius, or what?

A. I should say about 35 miles at this time. It

1595 used to be further.

Q. Your company devotes its entire effort to the wholesale business of groceries only; you don't carry notions, or anything of that sort?

A. No, sir.

Q. About how many commodities or items do you have that your company offers, 2,000 or 2,500?

A. I would say 2,000 items.

Q. And of that number, about how many items are accounted for as salt items, six or eight?

A. Oh, 15 or 20.

Q. Now, I want you to count them up in your mind and tell me exactly how many:

A. All right, I will first state that there are two types—

Q. (Interrupting.) Excuse me, I don't want your description on the record. All I want you to do is take a half minute and count up the number of salt items that you handle and then state the answer for the record.

A. Fifteen items.

Q. Now, those are total salt items of all companies that you handle, is that correct?

A. That is correct.

Q. Now, of those 15 salt items, how many are represented by Morton Salt Company's salt items?

A. At times, all. At the present time, seven.

1596 Q. So, the percentage of the salt items, maximum of 15, represents less than one per cent of the total number of commodities carried by your company?

A. That is true, but it doesn't represent one per cent of my volume.

Mr. McBride: Mr. Examiner, I will ask for an instruction. I asked only one question, and I only want one answer at a time.

Trial Examiner Purcell: The witness will please answer the question propounded by counsel and confine your answer to the scope of the question, and do not go beyond it, if you please.

I assume you made a motion to strike?

Mr. McBride: I should like to have the answer stricken, and have the question read over again, please.

Trial Examiner Purcell: The answer will be stricken, and the question re-read to the witness.

(The question referred to was read by the reporter.)

The Witness: That is true.

By Mr. McBride:

Q. Now, you became president of the company seven years ago, that would be 1935, is that correct?

A. That is correct.

Q. Was that in January of 1935?

A. No, it was August of 1935.

1597 Q. So that the first full calendar year that you were acquainted with the company, or associated with it, was 1936?

A. That is correct.

1598 Mr. Haslett: May we go off the record just a minute, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Proceed with your cross-examination.

W. L. RODDEY, the witness on the stand at the time of the recess, resumed the stand, and testified further as follows:

Cross-Examination (Continued) by Mr. McBride:

Q. Mr. Roddey, as I understand it, the total dollar volume of your company for all commodities for the calendar year 1936 was in excess of $200,000, is that correct?

A. That is correct.

Q. And the total dollar volume for all commodities for your company for the year 1937 was approximately $10,000 less than for the calendar year 1936?

A. That is correct.

Q. And the total dollar volume for all commodities 1599 of your company for 1938 was approximately $15,000 less than for the calendar year 1937?

A. Right.

Q. And the total dollar volume for all commodities for the year 1939 was approximately the same as for the year 1938?

A. Right.

Q. And the total dollar volume for all commodities for the year 1940 was approximately $19,000 less than for the year 1939?

A. That is correct.

Q. And the total dollar volume for all commodities for the year 1941 was approximately $13,000 over that of the year 1940?

A. That is right.

Q. I believe you testified, Mr. Roddey, that in addition to Thomas & Howard, you had a number of other wholesalers in your territory whom you described as competitors of your company?

A. Right.

Q. Eliminating Thomas & Howard for the moment, will you name some of those competitors. I recall the name Thornton, is that correct?

A. Yes.

Q. What is the exact corporate name for that wholesale house?

1600 A. Thornton Grocery Company.

Q. And they are located where?

A. In Elberton, Georgia.

Q. How far is that from Greenwood?

A. That is about 60 miles from Greenwood.

Q. Were they in existence during the entire seven years of your presidency of your company?

A. They have been, but they have not been competitors except for the last three or four years.

Q. During the last three or four years, you would describe them as competitors of your company?

A. That is correct.

Q. Have you lost any business to that company?

A. Yes.

Q. Did you lose any business to them on salt?

A. Not that I know of.

Q. Not that you know of?

A. No, sir.

Q. You may have, though, so far as your recollection goes?

A. That is correct.

Q. Now, will you name another competitor, please?

A. I might name Spratt Grocery Company.

Q. Spratt Grocery Company is located where?

A. At Laurens.

Q. And how far is that from Greenwood?

1601 A. That is 28 miles.

Q. And has Spratt Grocery Company been a so-called competitor of yours for the entire seven years?

A. They have.

Q. Have you ever lost any business to that company?

A. Plenty of it.

Q. And what sort of business, any salt business?

A. Yes, I have lost some salt business.

Q. What kind of salt business?

A. The particular salt business that I remember as losing was bulk salt business.

Q. You may have lost other kinds, as well as the bulk?

A. That is correct.

Q. But you are quite certain that you lost the bulk salt business to Spratt Grocery Company?

A. That is right.

Q. Now, will you name another one, please?

A. Hartley Grocery Company.

Q. And that is located where?

A. They are in Greenwood. The Greenwood company is a branch of the Columbia house.

Q. In other words, there are two houses under the same name of Hartley Grocery Company?

A. That is correct.

Q. Do you regard in your description as both
1602 houses being competitive with yourself, or only the one at Greenwood?

A. Well, I am in competition with both houses, but the one in Greenwood, of course, is my chief competitor.

Q. And have you ever lost any business to that company?

A. Lots of it.

Q. Salt business?

A. A lot of it.

Q. How much?

A. Well, the particular salt business I remember losing to Hartley was package business. That is, the square package, the same size as Morton's Kleer.

Q. So that you lost some package salt business to the Hartley Grocery Company?

A. That is correct.

Q. Do you recall when that occurred?

A. Well, this particular instance that I have in mind must have been 18 months to two years ago.

Q. I see.

A. Although, of course, I have lost it right along.

Q. Well now, is the reason for your losing that business to the Hartley Grocery Company due to the fact that you had—that he had a better resale price than you had?

A. A better wholesale price.

Q. A better wholesale price, which was offered to the retail customers in that area, is that correct?

1603 A. That is correct.

Q. Now, how much other business did you lose as a result of the fact that the salt prices on the package salt were higher than those of the Hartley Grocery Company?

A. It would be impossible to tell.

Q. Do you think that because of the fact that you were higher on square packages than Hartley Grocery Company was, that your entire line of commodities was affected, and your volume dropped as a result?

A. Well, in a small way, yes, but I could recoup the next 30 days by being able to sell another commodity cheaper

than Hartley could sell it. He takes it away from me one time, and I take it away from him another.

Q. Oh, then, you take other competitors' business while they take yours?

A. That is correct.

Q. And that is a constant recurring process in the wholesale business?

A. That is correct.

Q. Now, will you name another grocery competitor?

A. Do you want me to name a particular competitor that I have had trouble with on salt?

Q. Yes, I am not interested in the other commodities.

A. Well, leaving out Thomas & Howard, those are the customers. One other customer that I might give
1604 that I had some trouble with on salt was the Augusta Salt Company.

Q. You don't mean customers, you mean competitors.

A. Pardon me, a competitor.

Q. And they are located in Augusta?

A. Augusta, Georgia.

Q. And you have lost some salt business to that company?

A. That is correct.

Q. What kind of salt business did you lose?

A. Bulk salt business.

Q. When did that occur, Mr. Roddey?

A. Well, within the last couple of years.

Q. And you don't remember the exact date?

A. No, I don't.

Q. Do you remember the customer, the retail customer with respect to which the loss was suffered?

A. Yes, I could give you two or three.

Q. How much business did you lose as a result of your competition with the Augusta Grocery Company?

A. You mean, how much other business?

Q. That is right.

A. I couldn't say.

Q. You just feel fairly certain that you must have lost some, is that right?

A. I lost that particular salt business.

Q. Now, will you name the retail customers whom
1605 you lost to the Augusta Grocery Company on those particular occasions?

A. Well, in McCormick, South Carolina, that is a point about 25 miles below Greenwood on the road to Augusta, I

lost some salt business to the Augusta Grocery Company with a customer named J. R. Corley. I also lost business with a customer named M. L. Gibert.

Q. And in both instances you lost the salt business which you referred to, to the Augusta Grocery Company?

A. That is correct.

Q. Now, that was bulk salt, you say?

A. Bulk salt.

Q. One hundred pound bags?

A. One hundred pound bags.

Q. What type of salt were you offering to them in 100 pound bags? Let me correct that. Whose salt was it, identifying it by producer?

A. Well, it could have been one of two or three brands.

Q. You don't recall now whether you were handling Morton's or International's, or somebody else's in 100 pound bags at that time?

A. At one time of the year, I always handle Morton's salt. I always have, but sometimes I am out of it. I might be offering somebody else's salt.

Q. You don't recall which, at this particular time?

A. No, I don't.

1606 Q. Do you recall the price at which you were offering those 100 pound bags, still referring to the two retailers you just described?

A. No, but I remember that the Augusta Grocery Company sold them the salt at the same price that I could buy it, or that I had bought it.

Q. Did you know what the Augusta Salt Company was paying for that salt?

A. No, I didn't.

Q. Now, you have named the competitors, wholesalers whom you described as competitors, with whom you regard yourself as competitive in the salt business primarily.

A. Yes.

Q. The others whom you named this morning, you don't compete with in the salt business, is that right, essentially?

A. Well, that is true.

Mr. Haslett: May I have that question and answer read?

(The question and answer referred to was read by the reporter.)

The Witness: I would like to add to that, you excluded Thomas & Howard from those questions. Now, they are our biggest competitor.

By Mr. McBride:

Q. That is true of this whole particular line of
1607 questioning right now. I expressly excluded Thomas & Howard up to this point.

A. That is right.

Q. Well, Mr. Roddey, you identified Commission's exhibit No. 129 as being an invoice from the Morton Salt Company, showing shipments of certain items of salt under date of January 8, 1938, isn't that correct?

A. That is correct.

Q. I should show it to you. I am reading it directly from the invoice.

A. That is correct.

Q. The first item on that invoice is 200 sacks of 100 pound Kleer fine salt, cotton bags. It shows a price on here of $1.1½. Do you know whether Thomas & Howard Company was offering that type of salt at the date of this invoice, or within two or three weeks on either side of that date?

A. I couldn't say. That is too far away for me to remember, Mr. McBride.

Q. Now, immediately below that, the next item, 225 sacks of 50 pound Kleer fine salt, cotton bags, 55½ cents. Do you know whether Thomas & Howard at that date, or within two or three weeks or a month on either side of that date, was offering that particular salt?

A. The only thing I can say, the last four years, Thomas & Howard has just always beat me to death with salt.
1608 Now, it is not necessarily always Morton salt.

Mr. McBride: If the Examiner please, I ask that the answer be stricken as being unresponsive to the question.

Mr. Haslett: Mr. Examiner, I think the answer is responsive. He has taken particular items there, and the witness doesn't remember two years back, but he makes a general statement as to the whole thing.

Trial Examiner Purcell: Yes, I will agree with you, Mr. Haslett, I think the answer is responsive upon the theory that the whole must contain parts.

Mr. McBride: If the Examiner please, the witness has had plenty of opportunity this morning to describe his difficulty with Thomas & Howard, and before I am finished, he will have ample time to do that again, but while I am in the process of questioning the witness, I again ask the

Examiner to instruct the witness to answer my questions, and in due course he can make his statement to the questions as propounded.

Trial Examiner Purcell: Mr. Witness, at the request of counsel, I again suggest that you confine your answer to the question.

Mr. McBride: And I renew my motion to strike as being unresponsive. I asked only whether he knew Thomas & Howard were offering that particular item at that time, and that is all I asked in that question.

1609 Mr. Haslett: I think the Examiner has ruled on it.

Trial Examiner Purcell: I have ruled on it, and the ruling will stand.

The Witness: Mr. McBride, you asked me a specific question—

Trial Examiner Purcell: (Interrupting) Mr. Witness, I am very sorry, but a voluntary statement from the witness while he is under examination is not only not permissible, but not in the interest of good order and orderly procedure. Now, Mr. Haslett is sitting there listening to your testimony. If there is anything that he feels he wants to bring out on redirect examination, he is a very clean gentleman, and I am sure he will do it. If he doesn't do it, you may rest assured that it is not important in this case, and after all, he is the one who is to judge, and not the witness. Are you satisfied with the present instructions, Mr. McBride?

Mr. McBride: That is satisfactory.

By Mr. McBride:

Q. Now, returning to my question, Mr. Roddey, do you know whether or not on or about January 8, 1938, Thomas & Howard Company was handling Morton's 50 pound sack of Kleer fine salt in cotton bags?

A. I do not.

1610 Q. Now, the same question with respect to Morton's 25 pound Kleer sacks of fine salt in cotton bags?

A. I do not.

Q. That being the third item on the invoice, Commission's Exhibit No. 129. Now, on the same date, on or about January 8, 1938, do you know whether or not Thomas & Howard Company was handling Morton's 14-10 pound bales of Kleer table salt?

A. They were.

Q. And do you know what price Thomas & Howard paid for the 14-10 pound Kleer table salt?

A. Yes.

Q. What price was it?

A. I know they paid less for it than I did.

Q. Do you know what that price was?

A. Yes, it was 10-cents less than I paid, no matter what I paid, Thomas & Howard's price was always 10-cents less.

Q. How do you know that? Did you see an invoice?

A. Because the Morton Salt Company told me.

Q. Who told you that?

A. I think, Mr. Flynn and Mr. Pierce. That is one of the table salt items that Morton Salt Company has always offered to its quantity customers.

Q. Did you inquire either of Mr. Flynn or of any other representative of the Morton Salt Company on or about January 8, 1938, as to what price Thomas & Howard

1611 was paying for 14-10 pound Kleer table salt?

A. I don't remember.

Q. Now, how about 10 pound sacks of lump rock salt, six-eight pound average in burlap? Do you know whether Thomas & Howard handled that?

A. I don't know.

Q. The same question with respect to 100 pound Kleer A-grade salt in burlap, still referring to the same date in the exhibit?

A. You are asking me to remember something that happened four years ago. Well, I can't do it, and nobody else can.

Q. Then, I take it your answer is that you don't recall, is that right?

A. I don't recall.

Q. Now, the same question, Mr. Roddey, with respect to the 280 pound barrels of baker's flake salt?

A. I don't know.

Q. Now, I have in my hand here, Mr. Roddey, Commission's Exhibit No. 130, which you identified as Morton Salt Company's invoice showing shipment to your company of the commodities specified thereon, under date of June 23, 1937. The first item is 100 pounds of Kleer fine salt in 100 pound cotton sacks. Now, on or about June 23, 1937, or within a month of so either way from that date, do you know whether or not Thomas & Howard was

1612 offering that salt to the retail trade, speaking of Morton's now.

A. I don't know, Mr. McBride, and I can save you a whole lot of time by just telling you that I don't know it about any items on those invoices. If you pin me down to a month five years ago, I don't know.

Q. Then, as a system of short-cutting, I take it that your answer would be the same, then, with respect to all items on Commission's Exhibit 130, Commission's Exhibit No. 131, and Commission's Exhibit No. 132-A? I would like to have you examine those, if you will.

A. You won't allow me to make a general statement over the four or five year period that would cover all of these bills?

Q. I would like to know—let me reframe my question. With respect to Commission's Exhibit No. 130, showing a shipment dated June 23, 1937, do I understand correctly that you do not recall whether or not Thomas & Howard was within a month or two on either side of that date, offering any of the items as shown on that invoice?

A. Naturally, they were offering the round package.

Q. You are certain they were offering the round package?

A. I know they have always offered the round package.

Q. Then, excepting the round package from that exhibit, your answer would be that you don't know as to any other item on that invoice, is that correct?

1613 A. That is correct.

Q. Now, turning to Commission's Exhibit No. 131, showing a shipment to your company of the items listed thereon, on October 1, 1937, do I understand again, with the exception of the round package, that you do not know whether or not Thomas & Howard was offering those items within a month or two on either side of that date?

A. They always kept this in stock.

Q. Now, by "this," what are you pointing to?

A. Morton's smoke salt, Morton's seasoning and tender quick.

Q. Then, excepting those last three items and the blue package, you wouldn't know as to the other items on that invoice?

A. I wouldn't know.

Q. Now, turning to Commission's Exhibit No. 132-A, which shows a shipment of certain commodities to your company under date of September 17, 1940, and excepting therefrom the Morton's seasoning and tender quick, and

sugar cure salt, do I understand correctly that you do not know whether or not Thomas & Howard was offering any of the other items within a month or two on either side of that date?

A. I don't.

Q. Now, turning to Commission's Exhibit No. 131, you stated that on or about the shipment date of that invoice that you were certain Thomas & Howard Com-
1614 pany was then offering Morton's tender quick, Morton's seasoning and Morton's smoke salt, is that correct?

A. That is correct.

Q. Do you know of your own knowledge how much Thomas & Howard was paying for Morton's seasoning on or about Octber 1, 1937?

A. I do not.

Q. Do you know of your own knowledge how much Thomas & Howard Company was paying for Morton's smoke salt on or about that date?

A. I do not.

Q. And the same answer with respect to the tender quick, is that correct?

A. Correct.

Q. Now, referring to Commission's Exhibit 132-A, with respect to which you said that you were certain that Thomas & Howard was, on or about September 17, 1940, offering for sale Morton's sausage seasoning, tender quick and sugar cure, do you know what any of those items cost Thomas & Howard as of about that date?

A. I do not.

Q. Now, returning to Commission's Exhibit 131, showing shipping date of October 1, 1937, do you know what the sale price to the retail trade of Thomas & Howard was
1615 with respect to Morton's smoke salt?

A. At that particular date?

Q. That is right.

A. I do not, sir.

Q. Would that same answer be true with respect to the seasoning and the tender quick?

A. It would.

Q. And would that same answer be true with respect to the seasoning, the tender quick and the sugar cure appearing on Commission's Exhibit 132-A?

A. That is true.

Q. I believe you stated, Mr. Roddey, that you carried something like 2,000 or 2,500 items or commodities in your wholesale business?

A. That is true.

Q. Of which 15 normally were salt items?

A. That is correct.

Q. So far as you are acquainted with the business of Thomas & Howard Company, do they carry approximately the same number of commodities in their wholesale business?

A. No, as a rule, I will say that Thomas & Howard houses carry more items, maybe as many as 3,000 items.

Q. And that has generally been their practice during the seven years you have operated Rose-Phillips?

A. Yes, sir.

1616 Q. Do you know whether or not, Mr. Roddey, you have ever lost any other business to Thomas & Howard Company, other than the salt business, as you have described it this morning?

A. Yes, sir.

Q. You may have lost a lot of those 3,000 items other than the salt item, is that right?

A. Yes, lots of them.

Q. I think you stated further, Mr. Roddey, that from time to time you were certain you had lost some salt business to Thomas & Howard Company, is that correct?

A. That is correct.

Q. How many blue cans did you purchase during 1936, if you can recall?

A. I couldn't recall, Mr. McBride.

Q. Do you recall with respect to 1937?

A. No, sir, the only thing I could tell you was that I am selling a whole lot more of the round package since I have been receiving this 10-cents a case than I was before I received it.

Q. But you wouldn't have any recollection as to what your volume was?

A. Oh, I would say I might have sold 100 to 150 cases in 1936 and 1937, where now I am selling anywhere from 400 to 500.

1617 Q. That is, without the records before you, but so nearly as you can recall, is that right?

A. That is correct.

Q. Now, with respect to Thomas & Howard, will you

describe on what occasion you lost some salt business to Thomas & Howard Company? Just give me one occasion, to start with.

A. Yes, I can give you a lot of occasions.

Q. Well, let's just have one to start with.

A. Well, I lost the sale of a ton of salt to a customer in Ninety-Six, North Carolina. His name is J. R. Wertz & Company. This company is a good customer of mine. He offered me the business if I would meet Thomas & Howard's price.

Q. May I interrupt, and will you describe what type of salt it was that you are talking about?

A. It was bulk salt.

Q. And by that, you mean 100 pound bags?

A. Hundreds, fifties, twenty-fives, and 14-10's.

Q. That is what you describe as bulk salt?

A. That is right. Now, this customer wanted Morton's salt. I couldn't sell, it was below my cost. Now, I had to pass up the business. I found out later that this customer did not get all of his order in Morton salt. Some of it was another manufacturer's salt. Do you want to know whose it was?

1618 Q. All right.

A. It was International. I feel like I can tell you that that is a pretty general rule. I have seen Thomas & Howard—

Q. (Interrupting.) Just a moment, please. Just stick to one example for the moment, Mr. Roddey. What was the price that that customer paid for that salt at that time, referring now only to Morton's?

A. It was 95-cents on the hundred.

Q. How do you know that?

A. Because I remember it.

Q. I mean, did you see the invoice?

A. No, but I have got complete confidence in the customer.

Q. In other words, he told you it was 95-cents?

A. That is correct.

Q. What was your price at that time on the 100 pounds?

A. My price was $1.00.

Q. Did you know what Thomas & Howard paid for 100 pound bags at that time?

A. No, I don't.

Q. So, they may have been paying the same price you were for it, but selling it below cost, as far as you know?

A. That is correct.

Q. Would that be true with respect to the 50 pound bags?

A. Fifty pounds has a definite price below 100 pounds.

Q. And what was paid for the 50 pound bags in this case?

1619 A. If I remember, it was about 53-cents, but I am not sure on that.

Q. There again, you had only your customer's word for it, is that not correct?

A. That is correct.

Q. And what were you offering 50 pound bags for at that time?

A. I think I was offering them at 59-cents.

Q. As nearly as you can recall?

A. That is correct.

Q. Then, what was Thomas & Howard paying for 50 pound bags at that time, if you know?

A. I don't know.

Q. They may have been paying the same thing you were?

A. That is correct.

Q. Would that be true with respect to the other items that you described in your bulk salt statement?

A. It would.

Q. Now, at the time that you lost that salt business to this customer, how much other business did you lose at the same time, Mr. Roddey?

A. I couldn't say.

Q. You don't know whether you lost any other business or not?

A. Well, he is a good customer, and he gave me
1620 the breaks. He offered me the business at the same price, and if the other fellow got it, chances are he got something else to go along with it.

Q. But you are not sure whether they did or not, is that right?

A. No, sir.

Q. They may have only gone to Thomas & Howard for salt, and you might not have lost any other business as a result?

A. That is true, but it doesn't sound like it.

Q. Let me ask you this, Mr. Roddey: Are you at all times lower than all other people in the community except Thomas & Howard?

A. No, sir.

Q. In other words, on all of these commodities, or on a lot of them, you may be higher, some about the same, and on some lower, is that right?

A. That is correct.

Q. You haven't any agreement with any of these wholesalers to maintain prices at a fixed level on all 2,000 or 3,000 commodities?

A. No, sir.

Q. And accordingly, the operations of the wholesale business in Greenwood, like anywhere else on salt and all other items, may lose a customer in one place and pick it up in another, dependent on how your wholesale
1621 prices are offered, is that right?

A. That is correct.

Q. Has your offering price on—let me take a well-known commodity—sugar, ever been higher than somebody else's in your community other than Thomas & Howard's?

Mr. Haslett: I object to that. It is beyond the scope of the issues in this case.

Mr. McBride: If the Examiner please, I am just a little curious as to how this witness' business loses and gets business, hinged upon one particular commodity. I am not going to explore all 2,000 items, if that is Mr. Haslett's fear. I propose to find out the theory on which his wholesale business is run.

Mr. Haslett: We are interested only, Mr. Examiner, in salt at this hearing, and are not interested in any of the other 1999 items that makes up this man's business.

Trial Examiner Purcell: Except, Mr. Haslett, in so far as you yourself have developed from time to time that it necessarily resulted in the loss of business of other commodities.

Mr. Haslett: I still don't think that that gives counsel for the respondent a license to go into the background and prices of other commodities.

Trial Examiner Purcell: I will overrule your objection.

1622 Mr. Haslett: Note an exception to the Examiner's ruling.

Mr. McBride: Will you read the question back, please, Mr. Reporter?

(The question referred to was read by the reporter.)

The Witness: Yes.

By Mr. McBride:

Q. From time to time, it might be higher than some of your so-called competitors?

A. Yes, and it might be lower.

Q. Now, at the time it was higher, have you on occasions lost sugar business?

A. Yes.

Q. How much other business did you lose as a result of that?

Mr. Haslett: I object to that, Mr. Examiner.

Trial Examiner Purcell: Read back the last two questions and answers.

(The record was read by the reporter.)

Trial Examiner Purcell: Objection overruled.

Mr. Haslett: Note an exception to the Examiner's ruling. I can't, for the life of me, see where the loss of business due to the price of sugar has anything to do with the loss of business due to the price or the quantity discounts allowed by the respondent on salt.

1623 Trial Examiner Purcell: Except relatively.

Mr. Haslett: It depends on what the Examiner means by "relatively".

Trial Examiner Purcell: I have overruled your objection.

Mr. McBride: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I couldn't say. Just like I said on the salt, I can't tell how much I lose.

By Mr. McBride:

Q. You may or may not have lost any as a result of your being higher on that one item, is that right?

A. Well, it is not good business for a wholesaler to be high on too many items or to stay high.

Mr. McBride: Read my last question back to the witness, Mr. Reporter, please.

(The question referred to was read by the reporter.)

Mr. Haslett: Mr. Examiner, the question has been asked and answered.

Mr. McBride: The answer wasn't responsive, and I am trying to avoid making a motion to have your answer stricken from the record.

The Witness: I wouldn't know whether I lost business or whether I didn't; I would say that I did.

By Mr. McBride:

1624 Q. I think you stated, Mr. Roddey, that at one time you were paying $1.50 per case for Morton's blue package salt?

A. That is correct.

Q. At that time your resale price was $1.70 to the retail trade, is that correct?

A. That is correct.

Q. That would be 13⅓ per cent mark-up on the cost, is that right?

A. That sounds about right.

Q. Is that your normal mark-up on all 2,000 commodities?

A. No, sir, I wish it was.

Q. In other words, that is a fairly high mark-up, isn't it?

A. Yes.

Q. So that some of the business that you say you lost on, we will say the blue package salt, may have been the result of too high a mark-up, is that right?

A. No, it was a case of my buying so high that I couldn't sell in any market and be competitive. It was a slow moving item, because I was out of line.

Q. In 1936, do you know what Thomas & Howard was paying for Morton's blue package salt, both the iodized salt and free running, per case?

A. No, sir.

Q. Do you know what it was paying in 1937?

A. No, sir.

1625 Q. Do you know what it was paying in 1938?

Trial Examiner Purcell: Mr. McBride, pardon me, sir. I think the witness has been very consistent in every question that was asked him. He denied any knowledge of what the Thomas & Howard Company was paying for the Morton's products. I don't recall that he has testified at any point what one of his competitors paid for Morton's products.

Mr. McBride: True, but I haven't touched on the blue

package until now, as to Thomas & Howard's cost, but if the Examiner will recall, a number of questions were put to this witness by counsel for the Commission in which supposedly the purchase price of Thomas & Howard was to have some bearing, either as an abstract or a factual question, and the witness was perfectly willing to agree in his answers that it had quite a bearing on his business. Now, I want to know how much he knows about it.

Trial Examiner Purcell: That is perfectly true, but nevertheless the witness has been consistent from the beginning of his examination, and he did not undertake to profess any knowledge of what the products cost Thomas & Howard.

Mr. McBride: Well, I would like to have the record show completely that consistency, and this is the first time I have explored the witness' knowledge on the blue package.

1626 Trial Examiner Purcell: Well, you have two more questions to ask on the blue package, then, haven't you, that is, for 1940 and 1941? You have completed 1939, so go ahead and ask him the two questions on 1940 and 1941.

Mr. Haslett: Mr. Examiner, if I may put my oar in for a little remark. It is obvious that this witness does not know the prices at which Thomas & Howard pays for its commodities. He is in no way connected with Thomas & Howard. They are competitors. He wouldn't know the price, any more than he knows the price of C. D. Kenny or any other company.

Trial Examiner Purcell: I thought I had made that clear, but rather than have an extended argument on the record, let counsel put his other two questions covering 1940 and 1941.

Mr. McBride: Well, I want one more statement to show, in view of Mr. Haslett's statement. A factual question was asked this witness in terms of whether or not Thomas & Howard paid a certain price, whether that would affect his business. The same question was asked as to C. D. Kenny Company, and I think my question is perfectly consistent with the witness' answers to those questions.

Trial Examiner Purcell: To both of the questions the witness answered he didn't know.

Mr. McBride: I want the record to show that. As
1627 to Mr. Haslett's questions?

Trial Examiner Purcell: Yes, sir.

Mr. McBride: Quite the contrary, to my recollection—

Trial Examiner Purcell: He testified that he didn't know as to the cost of C. D. Kenny Company, did he not?

Mr. Haslett: No I predicated my question upon the fact that if Thomas & Howard were purchasing it at $1.40, and he was purchasing it at $1.50, would that in any way affect his business. I didn't predicate it on a factual basis.

Trial Examiner Purcell: It wasn't a factual question, and I understood it more in the light of a hypothetic question.

By Mr. McBride:

Q. Mr. Roddey, with respect to the years 1939, 1940 and 1941, do you know of your own knowledge what Thomas & Howard Company was paying at any time during those three years for Morton's blue package?

A. I do not.

Q. I show you Commission's Exhibit 132-A and 132-B, and I believe you testified with respect to 132-B that you paid the entire freight due on the salt which moved pursuant to that bill of lading?

1628 A. That is correct.

Q. Can you testify from your examination of those two exhibits how much that freight was?

A. That freight was $256.31.

Q. And did you get credit for the payment of freight on the face amount of the invoice?

A. That is correct

Q. So that you paid the amount of the invoice less the freight that you paid pursuant to that bill of lading?

A. That is correct.

Mr. Haslett: What exhibit was that, Mr. McBride?

Mr. McBride: Commission's Exhibit 132-A and B.

Mr. McBride:

Q. Now, returning to the Thomas & Howard Company, Mr. Roddey, I believe you testified that because you couldn't be competitive on salt, that your entire business was affected. Do I recall your statement correctly?

A. That is correct.

Q. To what extent was it affected, Mr. Roddey?

A. I couldn't say, Mr. McBride, but if I am out of line on a particular price, my business is affected.

Q. I believe that you testified that your business in 1937 was $10,000 less, approximately, than it was for 1936?

A. That is correct.

Q. Would you say that was accounted for because you may have been out of line on one or two salt items?

A. No, I wouldn't say that.

Q. In other words, that may have been from a number of conditions, is that right?

A. That is correct

Q. And the salt business may or may not have had anything to do with that, is that right?

A. I wouldn't say it didn't have anything to do with it, but on the other hand, I wouldn't say the salt was responsible for it.

Q. In any event, you don't know how much, if at all, it was responsible?

A. That is correct.

Q. I take it your answer to the same question would be the same as to 1938, 1939, 1940, and 1941, is that correct?

A. That is correct.

Q. I believe you testified, also, Mr. Roddey, that on Commission's Exhibit No. 130, that the penciled and ink notations which appear thereon were made in the regular course of your business?

A. That is correct.

Q. And I think your explanation of it was, summarizing it, that you were endeavoring to take from the invoiced price an amount equal to 10-cents per case on all of the Morton's iodized and Morton's free running salt appearing on that invoice, is that correct?

A. That is correct.

Q. Well now, is it a normal practice in your business to make deductions of that sort, Mr. Roddey?

A. No, sir.

Q. When you purchased the salt that is covered by that invoice, you purchased it at the price shown on the invoice, isn't that correct?

A. That is correct.

Q. As to each of those items?

A. Yes.

Q. Now, in order to make the record clear and to avoid a long series of questions, do I understand correctly that if I were to ask you the prices which C. D. Kenny Company

pay for the various salt items, including the Morton's blue package, for any of the years 1936 to 1941, inclusive, that your answers would be the same as with respect to the questions on Thomas & Howard, is that correct?

A. That is correct, I wouldn't know.

Q. Because I don't recall your testimony specifically, Mr. Roddey, on Commission's Exhibits Nos. 129, 130, 131, and 132-A, would you examine them, please, and see whether or not each of those invoices covers a carload of salt from the Morton Salt Company?

Mr. Haslett: I object to that, Mr. Examiner, the 1631 documents speak for themselves.

Mr. McBride: They don't speak for themselves at all. They show a certain poundage on the face of them.

The Witness: I can answer that question; they were all cars of salt.

Mr. Haslett: Well, I will withdraw my objection.

By Mr. McBride:

Q. They were all full cars of salt to the Rose-Phillips Company?

A. That is correct.

Q. Now, do you know whether or not with respect to each of the items on those invoices, whether you received the carload price?

A. I don't know. I reckon I received the carload price.

Q. In other words, so far as you know, as to each of those items on each of the invoices, you wouldn't know whether or not the less than carload price is higher than the amount shown on your invoice, is that right?

A. Well, I know that you couldn't buy less than a carload of salt and be in any way at all competitive. You would have to have a carload price.

Q. Let me repeat my question, Mr. Roddey.

A. I am sorry.

Q. With respect to each of these invoices at the time that the invoices were issued, did you know whether 1632 or not the less than carload price was higher or the same as the prices shown on these invoices?

A. It was higher.

Q. So, then, am I correct in stating that you did receive the carload price on each of the items shown on each of these invoices?

A. That is correct.

Q. How much business in the salt items have you lost to Thomas & Howard Company, Mr. Roddey?

A. How much what?

Mr. McBride: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: You mean, over the last few years?

By Mr. McBride:

Q. Well, let's take the year 1937, to start with.

A. If you pick a particular year, I couldn't tell you. If you will let me say from 1936 to date, I can tell you.

Q. Can you state that in dollars and cents from 1936 to date?

A. No, sir.

Q. You just feel that you must have lost some business to Thomas & Howard, is that right?

A. I have sold a whole lot less salt than I used to sell.

Q. And as a result of that, you concluded that you lost all of it to Thomas & Howard, is that right?

1633 A. Not necessarily. I have lost the biggest part of it to Thomas & Howard.

Q. But you are not sure of the amount or the circumstance, is that right?

A. No, sir.

Q. Now, because of the fact that you lost, as you say, presumably, some of your salt business to the Thomas & Howard Company, how much other business of all types on your other items have you lost?

A. I would say I have lost a pretty nice bit of business in the last few years.

Q. But you don't know how much, in terms of dollars and cents from 1936 to 1941?

A. No, sir.

Q. Then, as I understand your theory, you have lost quite a bit of general business just because of the fact that you may have been out of line on two or three salt items, is that right?

A. No, not at all. I have lost business because I have not been able to compete on salt and other items that certain competitors, mainly Thomas & Howard, have been able to purchase cheaper than I have been able to purchase them.

Q. Then, it is because a whole group of items are out of line in your business with respect to Thomas & Howard, so far as you know, is that right?

1634 A. That is correct.

Q. That causes this loss to your general business?

A. That is correct.

Q. And I think that one of those items in that whole group is salt, is that right?

A. I feel certain it is.

Q. But you can't segregate in your own mind how much loss of business is caused by salt and how much by the other items, is that right?

A. No, sir.

Mr. McBride: I think that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. But you have, Mr. Roddy, lost business to Thomas & Howard due to Thomas & Howard's quoting a lower price on salt?

A. That is correct.

Q. And on Morton's salt?

A. On Morton's salt.

Q. Mr. McBride asked you whether or not the salt items in comparison with other items carried in your business was less than one per cent. I believe you stated it was?

A. That is right.

Q. You had about 15 salt items?

A. That is right.

1635 Q. Would the dollar volume of business done in salt be less than one per cent of the dollar volume of your business?

A. Let me make a calculation, please. I would say it would be around one per cent, possibly a fraction over one per cent.

Q. The dollar volume of your business as compared with salt would be a little over one per cent.

A. That is correct.

Q. What particular items processed by the Morton Salt Company do you sell the most of?

A. I would say the one that represents the most dollar volume would be bulk salt, but the most popular number is the Kleer salt.

Q. Is that the 5-cent salt?

A. That is the 5-cent salt.

Q. Does your company receive any discount from the Morton Salt Company on that particular item?

A. No, sir.

Q. What effect would it have on your business if Thomas & Howard received a discount of 5-cents per case on that salt, while at the same time you received no discount on it?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: It would hurt me bad.

By Mr. Haslett:

1636 Q. Of course, that is a big item in your business?

A. That is correct.

Q. Is Thomas & Howard your principal competitors?

A. I would say they are my principal competitor, the hardest competition I have?

Q. How about the C. D. Kenny Company?

A. They used to be tough competition, but in the last 12 to 18 months, C. D. Kenny have changed their setup all over the south, and they are not a factor like they used to be.

Q. In response to several questions propounded by the learned counsel, Mr. McBride, you stated that you did not know the price at which Thomas & Howard were paying for their salt requirements.

A. That is correct.

Q. Notwithstanding that fact, you know that you have lost business to them on salt items, is that true, sir?

A. Yes, that is true. I felt like they were buying them cheaper than I was, all right, but I don't know to my knowledge.

Q. You testified that Thomas & Howard had on occasions offered salt to your customers at $1.50 per case, which was your cost at that particular time on Morton's free running and iodized salt?

A. That is correct.

1637 Q. It made no difference to you whether they were selling it at cost or were making a profit on it, it still affected your business, did it not?

A. That is right.

Mr. McBride: Mr. Examiner, I would like to hear that question read back again, please.

Trial Examiner Purcell: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

By Mr. Haslett:

Q. Mr. Roddy, I hand you Commission's exhibit No. 132-A and B, and call your particular attention to the items that appear thereon, on Commission's exhibit 132-A, and ask you to state whether or not the Morton's iodized salt and the Morton's free running salt which you paid freight on, appear on the invoice known as Commission's exhibit No. 132-A?

A. No, they do not appear on there.

Mr. McBride: Excuse me just a moment, I want to get that read back. I missed part of it. Would you read the question and answer back, Mr. Reporter?

Trial Examiner Purcell: In reading it back, it is my thought,—I misunderstood it, too, because of the noise—that you should have said 132-B at one point, instead of 132-A. You have that in mind as we go through it. Now, please read the question back, Mr. Reporter.

(The question and answer referred to were read 1638 by the reporter.)

Mr. McBride: I am sorry, I don't even understand the question, if the Examiner please.

Mr. Haslett: It is very plain and very clear, sir.

Trial Examiner Purcell: In other words, there was an item of free running salt on which freight was paid, according to exhibit 132-B?

Mr. Haslett: That is right.

Trial Examiner Purcell: Which items of salt do not appear on the statement 132-A?

Mr. Haslett: That is right, sir.

Trial Examiner Purcell: That is what I gathered. It could have been made clearer if you had said as reflected by 132-B, the freight that you paid as reflected by Commission's exhibit 132-B.

Mr. Haslett: But he didn't pay the freight as reflected by Commission's exhibit 132-B. The freight is reflected on the exhibit 132-A, and I was correct when I made my statement in asking the question.

Trial Examiner Purcell: I am not doubting your correctness, sir, I am simply trying to understand it. I have never seen the exhibit. May I see it?

Mr. Haslett: Surely.

Mr. McBride: I will have to object to the question, Mr. Examiner, because that question can't be in accord-
1639 ance with those two exhibits.

Mr. Haslett: I will disagree with counsel, that it is in accordance with the exhibits.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

Mr. Haslett: Did the Examiner rule on that objection?

Trial Examiner Purcell: No, I didn't rule on it. I am waiting to hear from you.

Mr. Haslett: Mr. Examiner, there is no doubt in my mind how the Examiner should rule on this. The question is perfectly clear, and the answer is responsive. I can't understand the objection to it.

Trial Examiner Purcell: The grounds of the objection have been stated.

Mr. Haslett: What are the grounds, let me hear them again.

Mr. McBride: I have gone over them, so you put your question, and I will clear it up.

Mr. Haslett: The question has been asked and answered.

Mr. McBride: All right, I will clear it up on cross-examination.

Trial Examiner Purcell: I will overrule the 1640 objection.

By Mr. Haslett:

Q. Mr. Roddey, I hand you Commission's exhibit No. 134, and ask you to state whether or not the Morton's round package salt billed by the Dixie Home Stores, which appear thereon, is the same Morton's round package salt on which you paid freight on, as represented by Commission's exhibit No. 132-B?

A. It is.

Q. Is any freight deducted from Commission's exhibit No. 134?

A. No.

Q. Approximately how many cars of salt did you purchase in the year 1936, if you know, sir?

A. I happen to have been making an estimate here in the last ten days or two weeks after I got this subpoena, about how much my salt business had been reduced over the last few years, and I was selling in 1936 around eight to nine cars of salt a year. Now, of course, our salt season runs from about—our big bulk season, which makes up our cars,

runs around, say, October through February, but in 1936, I sold eight cars of salt, possibly a little bit over.

Q. Well, did that figure decrease or increase as the years went by?

A. It decreased.

Q. And do you know approximately how many cars.

1641 you bought in 1940, sir?

A. I know in 1941.

Q. Let me have that, please.

A. I bought four cars, and I picked up some in a pool car in Greenville.

Q. You bought four cars in 1941 and picked up part of a pool car?

A. That is right.

Q. So, your business decreased about 50 per cent?

A. Just about 50 per cent.

Q. And would you say that business had decreased due to the quoting of lower prices by Thomas & Howard and other competitors on salt to your customers?

A. Absolutely.

Mr. Haslett: I think that is all, Mr. Examiner.

Mr. McBride: I will have to return to the witness, Mr. Examiner.

Recross Examination by Mr. McBride.

Q. Mr. Roddey, I believe you stated that the total freight on all of the items shown on Commission's exhibit No. 132-B, which includes, among other things, 175 containers of Morton's iodized and 25 containers of Morton's free running salt, amounting to $256.31, is that correct.

A. That is correct.

1642 Q. And you received credit for that on the face amount of the invoice, which is Commission's exhibit 132-A?

A. That is correct.

Q. On which there is no Morton's free running or Morton's iodized, is that correct?

A. That is correct.

Q. In other words, you received credit for the freight on Morton's free running and iodized appearing on Commission's exhibit No. 132-B in the form of a reduced net bill on the invoice, which is 132-A, is that right?

A. That is correct.

Q. So that the net cost to you of Morton's blue can, both the free running and iodized appearing on Commission's exhibit 132-B, and which you say are the same items as covered by Commission's exhibit 134, was $1.40 a case?

A. That is correct.

Q. And you did not pay freight in addition to the $1.40, is that right

A. That is correct.

Q. Without receiving credit for it in some form or other?

A. That is right.

Q. I think you testified, also, Mr. Roddey, that your mark-up on blue can of about 13⅓ per cent was higher than you had on a lot of items?

A. Yes, sir.

1643 Q. Referring now to the $1.70 price?

A. Yes, sir.

Q. Would it not have made some difference in your business and in your volume had you reduced your mark-up proportionate to what it was on some of the other commodities?

A. Yes, I think it would have increased my volume some.

Q. In other words, the mere fact that a competitor undersells you does not necessarily mean that they buy it for less, isn't that right?

A. That is true.

Q. They may be having a lower mark-up than you were having, for example, on Morton's blue can?

A. That is true, but they haven't marked it down to cost.

Q. You have never known of a wholesaler selling items at cost as a leader, is that right?

A. Not unless he was hurt on money or something, unless he needed money mighty bad.

Q. But it has happened occasionally in the wholesale business, that the wholesaler will sell at cost or below cost for any one of a number of reasons?

A. That is correct.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Roddey, you say the mark-up was about
1644 13½ per cent when you were buying it at $1.50?

A. I think that is what Mr. McBride figured, and it sounds about right.

Q. But if you had decreased the sale price of your commodity, your profits would have decreased likewise, wouldn't they, sir?

A. That is correct.

Mr. McBride: I object to that question now, if the Examiner please. It doesn't follow at all that the profits would have decreased. The mere fact that the mark-up is less, and I want this to appear on the record, if I may, has no bearing on this man's profits, because obviously his volume may have increased, it may have saved some of his business which he says he lost because of salt and some other items which are unidentified, and I simply can't permit the question to be repeated to the witness in terms of profit without objection. Now, we have been over and over this question of cost and sale price, and profits, and we have received various rulings on it, but here, quite obviously it is out of order.

Trial Examiner Purcell: I will sustain the objection to it.

Mr. McBride: May I ask that the answer be stricken too?

Trial Examiner Purcell: The answer may be stricken.

1645 Mr. Haslett: May we go off the record, please, sir?

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

Strike out my ruling, Mr. Reporter.

Mr. McBride: If the Examiner please, I would like that to stay on the record, and I would like the Examiner to state his reasons for reversing it.

Trial Examiner Purcell: Let the record show that the Examiner reverses his ruling just made, and overrules the objection, and that the question and answer stand as given.

Mr. McBride: May I ask the Examiner to state for the record the reasons for his reversal?

Trial Examiner Purcell: No, I don't think it is necessary. We have gone into that off the record, and I don't think it is necessary for it to be on the record. If I am wrong, I am wrong, and if I am not, I am not.

By Mr. Haslett:

Q. Mr. Roddey, you stated in reply to Mr. McBride's question that the prices which you paid for salt that appear on Commission's exhibit 130 were the prices that you agreed to pay for the salt at the time you ordered it, sir.

A. That is correct.

Q. But the reason you took over the $8 for the 80
1646 cases of Morton's iodized and Morton's free running salt was due to the fact that this price was being given to some of your competitors?

A. That is right, and I felt like I was entitled to it.

Q. Why did you want to be entitled to it, sir?

A. I felt like if Morton Salt Company was going to sell my competitors at $1.40, they ought to sell me at $1.40, because I was buying in practically the same quantity that they were.

Mr. Haslett: I think that is all, Mr. Examiner.

Recross Examination by Mr. McBride.

Q. Mr. Roddey, does it follow that if you mark an item down, that you necessarily will suffer a profit loss?

A. Repeat that once more.

Mr. McBride: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Not necessarily.

Mr. McBride: I believe that is all.

Mr. Haslett: That is all, Mr. Roddey, thank you very much sir.

(Witness excused.)

Trial Examiner Purcell: Call your next witness.

Mr. Haslett: May we have a five minute recess, Mr. Examiner.

1647 Trial Examiner Purcell: A short recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over, gentlemen.

J. C. TODD was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your name to the reporter, Mr. Todd?
A. J. C. Todd.
Q. And where do you reside, sir?
A. Laurens, South Carolina.
Q. And in what business are you engaged?
A. Wholesale groceries.
Q. And with companies are you connected, sir?
A. Well, I operate as an individual at Clinton, J. C. Todd. I am president and sole owner of Todd-Woolbright Company in Spartanburg. The same thing is true of the Spratt Grocery Company at Laurens.
Q. So, you are operating three companies?
A. Yes, sir.
Q. At the present time?
A. Yes, sir.
Q. Now, is Spratt Grocery Company at Laurens a corporation?
1648 A. Yes, sir.
Q. And under the laws of what state was it incorporated?
A. South Carolina.
Q. How about the Todd-Woolbright Company, sir?
A. It is incorporated under the laws of South Carolina.
Q. And the one at Clinton?
A. It is not incorporated.
Q. And what is the name of that company?
A. J. C. Todd.
Q. That is an individual name?
A. Just my name, yes.
Q. What is the business of all three corporations, sir?
A. Wholesale grocers.
Q. Or, rather, the two corporations and the individual, wholesale grocers?
A. Yes, sir.
Q. They sell groceries and allied products to the retail trade?
A. Yes.

Q. What position do you hold with the Spratt Grocery Company?

A. President.

Q. And with the Todd-Woolbright Company?

A. President.

Q. And you are the sole owner of J. C. Todd Company, Clinton, South Carolina?

1649 A. Yes, sir.

Q. Now, what territory is covered by the Spratt Grocery Company at Laurens, South Carolina?

A. I work in a radius of 50 miles.

Q. And what territory is covered by the Todd-Woolbright Company at Spartanburg, South Carolina?

A. Possibly a little further to the north, but hardly any to the south.

Q. Within a radius of how many miles, if you know, sir?

A. I expect 60 miles north of Spartanburg, up in North Carolina.

Q. How about the business operated by you under the name of J. C. Todd at Clinton?

A. Just locally in the city of Clinton.

Q. You say that Todd-Woolbright Company does sell in the state of North Carolina?

A. Yes.

Q. Has the Spratt Grocery Company at Laurens any competitors?

A. Numerous ones.

Q. Would you name some of those, please?

A. Thomas & Howard, Newberry, Greenville and Spartanburg; Hartley Grocery Company in Columbia and Greenwood; Lipscomb-Russell Company and Rose-Phillips. I can't name them all.

Q. You have competitors in every area you operate in?

1650 A. Yes, I would think Laurens is the most closely worked town that I know of. It is claimed to be the center of the Piedmont.

Q. How about Todd-Woolbright Company, have they any competitors?

A. Yes, sir.

Q. Will you name some of those, sir?

A. Thomas & Howard at Spartanburg, Lovett Grocery Company, J. H. Sudduth, Thomas & Howard at Charlotte, R. P. Turner. I think that is about all.

Q. Is C. D. Kenny Company your competitors?

A. They have been, but they have withdrawn from the Spartanburg market, I understand. They were at one time.

Q. Do you encounter the competition of C. D. Kenny out of Asheville, North Carolina?

A. Yes, I suppose so. I am not as familiar with the Spartanburg operations as possibly I should be. I only go there two or three times a week.

Q. Now, the J. C. Todd Company at Clinton, does it have any competitors?

A. Oh, yes, the same ones.

Q. Practically the same competitors?

A. Yes.

Q. Does your company at Laurens, South Carolina, the Spratt Grocery Company, purchase or handle salt?

1651 A. Yes, sir.

Q. Does it make any purchases from the Morton Salt Company?

A. Not recently.

Q. Has it in the past purchased from the Morton Salt Company?

A. Yes.

Q. What type of salt did your company at Laurens purchase from the Morton Salt Company?

A. At Laurens, I think it was mostly bulk salt.

Q. Did they handle any of the round package blue label salt?

A. We have in the last six or seven years, yes.

Q. You have handled that particular type of salt?

A. Yes.

Q. How about the Todd-Woolbright Company, do they make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. And they purchase, also, from other processors of salt?

A. Yes, sir.

Q. What type of salt does Todd-Woolbright Company purchase?

A. Practically all types.

Q. Do they purchase any round package free running salt from the Morton Salt Company?

A. Not from the Morton Salt Company direct now, I don't think.

1652 Q. How do they obtain their source of supply at the present time?

A. We first bought salt direct from Morton, and in search of a better price, the broker informed us that we could get it from C. D. Kenny at $1.45, which was 5-cents a case cheaper than we were then paying. Later on, we found that Dixie Home Stores would sell it at 10-cents a case under the established price.

Q. Did you switch your business?

A. We switched the business over to Dixie Home Stores.

Q. And the Todd-Woolbright Company at the present time is purchasing its requirements of Morton's round package free running and iodized salt through the Dixie Home Stores?

A. Yes.

Q. Do you know approximately how many cases of Morton's round package free running salt the Todd-Woolbright Company purchases during a year's period?

A. No, I don't. I would say roughly 500 cases.

Q. Around 500 cases per year?

A. Yes, sir.

Q. Has that increased or decreased during the past years?

A. I imagine it has increased. Our business as a whole has increased quite considerably.

Q. I see, sir. Now, what other types of salt does the Todd-Woolbright Company purchase from the Morton

1653 Salt Company?

A. Well, I think occasionally they buy their full line, except the round package salt.

Q. And when it purchases other types of salt, other than the round package salt, it purchases direct from the Morton Salt Company?

A. Yes, usually they buy in a pool car. They have a limited storage, and can't store a full car of salt.

Q. Now, does the Spratt Grocery at Laurens, South Carolina, handle any other types of salt other than the round package salt?

A. Yes, sir.

Q. How does it purchase its other requirements of salt from the Morton Salt Company, other than the round package salt?

A. We don't handle anything from Morton's but that.

Q. But the round package salt?

A. Yes.

Q. Now, how about the J. C. Todd Company at Clinton?

A. No.

Q. They don't handle any salt from Morton at all?
A. Except they draw that from me, the round salt from me.
Q. You mean, from the Todd-Woolbright Company?
A. Yes.
Q. And would the business run at Laurens under
1654 the name of Spratt Grocery Company draw its requirements from the Todd-Woolbright Company on the Morton round package salt?
A. Sometimes, and sometimes from the Dixie Home Stores, but usually it is much simpler to buy three or four hundred cases at one time and bring it down to Laurens from Spartanburg, but the Dixie Home Stores has billed us direct.
Q. What was the reason for your company beginning to obtain its requirements of its round package free running salt through the Dixie Home Stores?
A. We had a cheaper price.
Q. You mean, you could buy it cheaper from the Dixie Home Stores than you could from the Morton Salt Company?
A. That is correct.
Q. Why did you want to buy it cheaper?
A. To meet competition and make more money.
Q. To meet competition and make more money?
A. Yes.
Q. Couldn't you meet competition when you were paying $1.50 a case for it, sir?
A. Well, to tell you the truth, I haven't had much competition on Morton's round salt, because it is a very slow seller with us. I would say we sell one case of round salt to fifty cases of the square salt.
Q. Where do you obtain your supply of square salt, sir?
A. Well, from different places. I am not bound to
1655 any one particular company, I have bought it from practically every one of the companies.
Q. Do you purchase any of it from the Morton Salt Company?
A. No, sir. I have offered them the business.
Q. Why wouldn't they take it?
A. They wouldn't take it the way I offered it to them.
Q. Why? Did you want a discount on it?
A. No, I just wanted the same price our competitors were getting.

Q. And they wouldn't give you the same price?

Trial Examiner Purcell: I didn't get that last.

The Witness: I said I offered the business to a representative of the Morton Salt Company, and he asked me then did I ask for a discount, and I said, no, I merely asked for the same price my competitors were getting.

By Mr. Haslett:

Q. And did Morton Salt Company refuse to give you the same price they were giving your competitors?

A. Yes.

Q. Do you do any purchasing in any of the three warehouses that you operate on a carload basis from the Morton Salt Company?

A. I don't think I have ever bought a car of salt from Morton. I may be mistaken on that, though.

Q. How does your company place its orders for its
1656 requirements of round package salt? Does a salesman or a broker of the Morton Salt Company contact you?

A. The broker.

Q. What is his name, sir?

A. J. L. Gentry.

Q. Where is he located?

A. Spartanburg, South Carolina.

Q. And is he the broker for the Morton Salt Company?

A. Yes.

Q. Does he solicit orders from the Todd-Woolbright Company for its requirements of Morton's salt?

A. Yes.

Q. Including the round package?

A. Yes.

Q. And as a result of which commodities are shipped to you in a pool car with other customers of the Morton Salt Company?

A. At Spartanburg, yes.

Q. At Spartanburg?

A. Yes.

Q. Your company, then, hauls it from the siding where the car is located to your warehouse?

A. Yes.

Q. Does the Morton Salt Company compensate you in any way for the drayage or the cartage of that salt
1657 from the siding to your warehouse?

A. No, sir.

Q. You are invoiced then by the Dixie Home Stores for the round package salt that comes in that particular car?

A. Yes, sir.

Q. And the invoice would show the discount of 10-cents per case?

A. I don't know whether it was billed net or so much less discount.

Q. It would be the net price of $1.40 a case?

A. That is right.

Q. How long have you been invoiced for your requirements of round package salt by the Dixie Home Stores?

A. Well, I couldn't be accurate about it, but for several years, three or four years, I would say.

Q. You would say the last several years?

A. Yes, sir.

Q. You say, it has been since 1939, would you?

A. Yes.

Q. How was that arrangement entered into, whereby you would be invoiced by the Dixie Home Stores for your purchases of round package salt?

A. We complained to the broker about other jobbers selling their salt at a very close figure, and we suggested to him that others might be buying it cheaper, and
1658 he admitted that they were, and that he would handle it that way and get us that price.

Q. And what was the name of that broker, sir?

A. J. L. Gentry.

Q. Did he state to you what other companies were purchasing Morton's salt cheaper than the price that you were paying for it, sir?

A. Just two.

Q. What companies were they, sir?

A. C. D. Kenny and Dixie Home Stores.

Q. Is C. D. Kenny a competitor of yours?

A. Yes, sir.

Q. Prior to the time that you began to be invoiced for your requirements of Morton's round package salt through the Dixie Home Stores, what effect would it have upon your business if one of your competitors was selling Morton's salt at a price of 2-cents per case under the price that you were then charging for the commodity of the same size, grade and quality?

A. You mean, if my competitor buys it 2-cents cheaper than I am selling it?

Q. No, sir, selling it for 2-cents cheaper than you were selling it for, sir.

A. Well, of course, it would have some effect, but just 2-cents a case on that type of salt wouldn't be much.

1659 Q. What is your resale price for the round package salt to your customers?

A. Most of our sales are made at around $1.60.

Q. $1.60?

A. Yes, sir.

Q. And is that true as to all of the three warehouses operated by you?

A. Yes, sir.

Q. In Spartanburg, Laurens and Clinton?

A. Yes, sir.

Q. $1.60 per case?

A. Yes, sir.

Q. What effect would it have upon your business if one of your competitors was offering it at $1.55 a case, while at the same time you were offering it at $1.60 a case?

A. Well, it would have an adverse effect, but we wouldn't let them keep that up long if we could possibly help it.

Q. What would you do?

A. We would absorb the loss.

Q. Would you meet the price?

A. In some instances, we would.

Q. Why would you meet it?

A. Well, if you are out of line on too many items, you lose business all the way around. You lose not only business, but you lose prestige with the trade. The trade

1660 likes to stay with the winner, they don't like to stay with a loser.

Q. What effect would it have upon your business if one of your competitors was purchasing Morton's salt at $1.40 a case, while at the same time you were paying $1.50 a case for it, sir?

A. Well,—

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: It would have a very bad effect.

By Mr. Haslett:

Q. You say it would have a very bad effect, sir?

A. Yes.

Q. And what effect would it have upon your business

if one of your competitors was paying $1.35 a case for Morton's round package blue label free running and iodized salt, while at the same time you were paying $1.40 a case for it, sir?

Mr. McBride: Same objection.

Trial Examiner Purcell: Objection overruled. The witness may answer.

The Witness: If he used that price to influence the trade, it would have a very bad effect. Some jobbers go and tell a certain class of trade that "We are very large operators, we buy goods cheaper, therefore, if you will stick with us on the whole line, you will save money." It may be a true or a false argument, but it is used.

1661 By Mr. Haslett:

Q. I believe you stated that you purchased other types of salt other than the round package salt direct from the Morton Salt Company for your warehouse at Spartanburg, under the name of Todd-Woolbright Company?

A. That is right.

Q. Does your company receive any discounts upon its purchases of those grades of salt and types of salt from the Morton Salt Company?

A. Not right now, I don't think. There have been times when the salt was sold at certain units off, and we never knew whether we got the correct number of units or not.

Q. You are speaking now of Morton's salt?

A. Yes.

Q. What was the approximate amount of money for each unit?

A. Five-cents a case for 36-one and one halves, as I understand, was the unit, and we have bought it where there was a string of units off, meaning by that, four or five or six, I don't know how much.

Q. A multiplication of unit discounts?

A. Yes.

Q. Is that practice in effect at the present time, sir?

A. Not as far as I can find out. It probably is, though.

Q. Do you receive them?

A. No, sir.

1662 Q. Would your business be in any way affected by the fact that one of your competitors was getting a 5-cent unit discount off on its 36-1½'s, 5-cents off?

A. Yes, sir.

Mr. McBride: I object to that question, Mr. Examiner.

Trial Examiner Purcell: I don't think that counsel had completed his question, had you, Mr. Haslett?

Mr. Haslett: No, sir.

By Mr. Haslett:

Q. —36-1½'s, 5-cents off, while at the same time you were purchasing it and not receiving any unit discounts on such purchases?

Mr. McBride: Now, I object to the question.

Trial Examiner Purcell: I will overrule the objection. You may answer the question.

Mr. Haslett: Do you want the question read back to you?

The Witness: If you will give me the gist of it, it will be just the same.

Trial Examiner Purcell: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: If the competitor used it, it certainly would put us out of the salt business, because the 1663 unit is presently our profit, total profit on 36-1½ salt.

By Mr. Haslett:

Q. And that is known in the trade as 5-cent salt?

A. Yes, sir.

Q. Has your salt business since 1936 increased or decreased?

A. Decreased terrifically.

Q. And do you know the reason why it has decreased, sir?

A. Yes, sir.

Q. Will you state the reason for it, sir?

A. Well, we haven't been competitive in price.

Q. Why couldn't you be competitive, sir?

A. We couldn't buy it cheap enough, or else we couldn't sell it cheap enough.

Q. So, the price at which you pay for your requirements of salt is an important factor in your business, isn't that correct?

A. Decidedly.

Q. And the price at which your competitor is selling salt is given consideration by your company in determining the price at which it sells its products, isn't that correct?

A. Yes, sir.

Q. Has your business in the round package free running salt that you obtain from the Morton Salt Company through any means or medium, decreased or increased
1664 during the past several years?

A. I don't really know, because we pay very little attention to salt. We have lost all interest in it whatever.

Q. Why did you lose interest in it, sir?

A. Well, we couldn't make any profit out of it.

Q. Does your company purchase any of the block salt?

A. Yes, sir.

Q. Does it make any purchases of that type of salt from the Morton Salt Company?

A. I suppose so, yes.

Q. Do you know definitely whether or not they do?

A. I think so, yes.

Q. Does it receive any discount on that?

A. Fifty pound blocks, yes.

Q. Does it receive any discount on such purchases?

A. Not that I know of.

Q. Has your company lost any business to the Thomas & Howard Company due to the Thomas & Howard Company quoting lower prices on salt than you were apparently charging for the products?

A. As I understand that question, did we lose the salt business to Thomas & Howard?

Q. That is right, sir.

A. Definitely, yes.

Q. What was the reason for that, sir?

1665 A. They have had very cheap prices, and they have always pushed it very hard.

Q. Cheap prices and the promotional work has affected your business?

A. Yes.

Q. Has your company lost any business to C. D. Kenny or any of its branches due to Kenny Company quoting a lower price on salt?

A. I would say no.

Q. What particular item of salt processed by the Morton Salt Company do you sell the most of?

A. Processed by the Morton Salt Company, well, I would say the round salt.

Q. You sell more round than any other type of salt?

A. Yes, because we don't buy much from Morton. The biggest seller in salt is the 36/1½ pound cartons.

Q. Is that the 5-cent salt?
A. Yes.
Q. You don't purchase very much of that from the Morton Salt Company?
A. No, sir.
Mr. Haslett: I think that is all, Mr. Examiner.

Cross-Examination by Mr. McBride.

Q. Mr. Todd, you say that as nearly as you can
1666 recall, your salt business has dropped off in the past several years?
A. Yes.
Q. That is, your total business purchased from all salt companies, is that right?
A. My salt business is off considerably, yes.
Q. Now, do you know whether or not the few items that you have purchased from the Morton Salt Company have decreased during that same period?
A. I wouldn't say.
Q. In other words, they may have held up the same, but your general salt business may have decreased?
A. That is right, sir.
Q. I think you also stated, Mr. Todd, that you offered the Morton Salt Company some business on one and one-half pound squares?
A. Oh, yes, frequently.
Q. And you eventually didn't place the business with the Morton Salt Company?
A. That is correct.
Q. Is that because you could purchase that same type of salt cheaper from some other company?
A. I have been able from other salt people to buy it cheaper than I could from Morton.
Q. Then, I think you indicated, also, that at times when you have purchased a few cases of squares from Mor-
1667 ton, that you got one unit, and sometimes a string of units off, as you described it?
A. Yes. I don't remember when all of that unit business was in effect, though.
Q. Well, that wasn't to you, particularly, that was the general reduction of the price level in the territory, is that right?
A. Yes.

Q. So far as you know?
A. Yes.
Q. When you say that you have lost certain salt business to Thomas & Howard Company, you are referring to your salt business in general, as I understand it?
A. Yes.
Q. Do you know of your own knowledge whether or not you have lost any business to the Thomas & Howard Company on the few items you purchase from the Morton Salt Company?
A. I do not, no, sir. As I said, we handle very little of Morton's products.
Q. That was what I was trying to get at, Mr. Todd, that your small volume with Morton may have held up and the loss may have been suffered in the items of the other producers that you handle, is that right?
A. It could have been that way, yes. I am not prepared to say.
1668 Mr. McBride: I think that is all, Mr. Examiner.
Mr. Haslett: That is all, Mr. Todd, thank you very much.
(Witness excused.)
Mr. Haslett: I will call Mr. Brown as the Commission's next witness.

CHARLES S. BROWN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Brown?
A. Charles S. Brown.
Q. And where do you reside, Mr. Brown?
A. Asheville, North Carolina.
Q. And in what business are you engaged?
A. Wholesale groceries.
Q. And with what company are you connected?
A. C. D. Kenny Company.
Q. And where is the C. D. Kenny Company located?
A. Its main office is in Baltimore, Maryland.
Q. And where is the part that you are connected with located, sir?

A. Asheville, North Carolina.

1669 Q. Is that a branch of C. D. Kenny Company of Baltimore?

A. Yes.

Q. And what is the business of C. D. Kenny Company?

A. Well, wholesale groceries.

Q. And what position do you hold with the company, sir?

A. Manager of the local branch, the Asheville branch.

Q. At Asheville, North Carolina?

A. Yes.

Q. Is C. D. Kenny Company a corporation?

A. Yes, sir.

Q. Do you know under the laws of what state it was incorporated?

A. Maryland, I think.

Q. What territory is covered by your particular branch of C. D. Kenny where you are manager?

A. How is that?

Q. What territory is covered by the branch of C. D. Kenny Company located in Asheville, of which you are manager?

A. A radius of about 50 miles, one direction about 65.

Q. Do you come down into South Carolina?

A. No, sir.

Q. You stay only within the state of North Carolina?

A. Right.

Q. Does your company have any competitors in the Asheville territory?

1670 A. One or two.

Q. Will you name those one or two, sir?

A. Thomas & Howard, A. J. Overton, Waynesville Wholesale Grocery, Taylor Grocery, Merchants Produce, Slade & Fakes, R. P. Turner.

Q. Where are they located, sir?

A. In Greer, South Carolina.

Q. Is that near Asheville?

A. It comes into our territory.

Q. I see.

A. It is about 60 miles, I guess.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes.
Q. How is that brought about, sir?
A. Our main office makes the purchases, and we give the orders to the local broker, but the contracts and purchases are made in Baltimore.
Q. And does the local broker of the Morton Salt Company call upon you?
A. Yes.
Q. And solicits orders for Morton salt?
A. Yes, sir.
Q. As a result of which orders, commodities are
1671 shipped to you by the Morton Salt Company?
A. Yes, sir.
Q. As a result of orders that you place with the broker of the Morton Salt Company, are commodities shipped to you by the Morton Salt Company in cars?
A. In pool cars.
Q. In pool cars?
A. Sometimes in cars.
Q. Have there been occasions when you purchased a full car of salt from the Morton Salt Company?
A. Yes, sir.
Q. When it comes in a full car, is the car put on your siding?
A. No, sir.
Q. Where is the car situated?
A. The broker's warehouse.
Q. In Asheville, North Carolina?
A. Yes.
Q. Does your company send its trucks to the broker's siding and haul it from the siding to your warehouse?
A. Yes.
Q. In company-owned trucks?
A. Yes, sir.
Q. Are you compensated in any way by the Morton Salt Company for that service?
1672 A. No, sir.
Q. Are the bills for the commodities that you purchase from the Morton Salt Company paid through your office?
A. No, sir.
Q. Paid through the home office?
A. The home office in Baltimore.
Q. And what type of salt does your company purchase from the Morton Salt Company in your Asheville branch?

A. We handle the round free running and iodized, and 24/1½ pound square package.

Q. Is that the Kleer brand?

A. That is Triangle.

Q. Triangle?

A. Yes, sir.

Q. How much does that sell for to the consumer, if you know?

A. About $1.15, I think.

Q. That is, to the retailers?

A. It is a nickel to the consumer?

Q. That is what they call the 5-cent salt?

A. That is right.

Q. What is the price charged by your company at the present time from the Asheville branch of C. D. Kenny Company for Morton's round package blue label free running and iodized salt per case to the retailer customers?

1673 A. $1.60.

Q. $1.60?

A. Yes, sir.

Q. Has that price been in effect for a long time, sir?

A. Yes, sir.

Q. What is the price that your company pays for the salt of the round package type from the Morton Salt Company?

A. You mean, our invoice price or the quantity price?

Q. Your invoice price, sir.

A. Our invoice price is $1.50.

Q. Do you get any discount at all from the Morton Salt Company off the invoice price?

A. For quantity price, at the end of the year we get a quantity price.

Q. And what is that, sir?

A. Ten-cents, I think.

Q. Ten-cents on each case of salt?

A. I think that is right.

Q. Well, how many cases does the Asheville branch of the C. D. Kenny Company purchase from the Morton Salt Company during a 12 consecutive months' period?

A. About 250 cases.

Q. About 250 cases?

A. Yes, sir.

Q. And has that been the approximate figure for 1674 the last several years?

A. As well as I can recall, yes.

Q. And it receives 10-cents a case from the Morton Salt Company on those purchases?

A. Quantity purchases, whatever the quantity is, yes.

Q. Do you know whether it is 10-cents a case or not, sir?

A. Not for sure, but I think it is.

Q. You think it is, but it might be 15?

A. It is 15, if they get the quantity, but I don't think our company sells enough to make that quantity.

Q. But the Asheville branch of the C. D. Kenny Company doesn't purchase 5,000 cases of Morton's free running salt a year, does it?

A. No, sir.

Q. They don't purchase 50,000 cases a year, do they?

A. No, sir.

Q. Do they purchase $50,000 worth of salt of all types during a 12 months' period from all sources?

A. No, sir.

Q. Do you know whether or not it receives any discount from the Morton Salt Company upon the commodities processed by the Morton Salt Company other than the round package salt?

A. Give me that question again, please.

Mr. Haslett: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

1675 The Witness: What do you mean by "discount"?

By Mr. Haslett:

Q. Well, an amount equal to approximately 5 per cent off of the list price on the Kleer salt and other types of commodities, other than the round package salt?

A. You mean, quantity discount?

Q. That is right, sir.

A. Yes, sir.

Q. It does receive an additional discount?

A. Yes, from the list price.

Q. From the list price, a quantity discount?

A. Yes, sir.

Q. Do you know what that is, sir?

A. I don't exactly, no, sir.

Q. When your company in its Asheville branch purchases a carload of salt from the Morton Salt Company, it receives a carload price?

A. I suppose so.

Q. It wouldn't receive the less than carload price on a full car, would it, sir?

A. I wouldn't think so.

Q. How is the discount that your company receives on its purchases of Morton's round package salt through the Asheville office, paid to you by your company's main office?

A. We are issued a credit memorandum for it at the end of the year when it is computed as to how much we have used, and as to whether they have had Morton's quantity price.

1675

Q. What do you do with that credit memorandum, what account do you apply it to, sir?

A. Credit.

Q. To what, sir?

A. We credit the store.

Q. You credit the branch?

A. Yes, sir.

Q. And to what particular account on your books do you apply the credit memorandum that comes from your main office to the Asheville branch of the C. D. Kenny Company?

A. I can't answer that. I think it is handled through Baltimore. They just give us a slip that that credit has been placed to our account.

Q. I see. You don't know what is done with it, sir?

A. No, sir.

Q. Is the price at which your company pays for its commodities of salt an important factor in its business?

A. Not necessarily.

Q. Not important?

A. We don't have volume enough. We have too much competition on other brands.

Q. Is the price which your company pays for all of its requirements of the various commodities which it handles, an important factor in its business?

1677

A. Will you ask that question again, please?

Mr. Haslett: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Yes.

By Mr. Haslett:

Q. Is the price at which your competitors sell their salt given consideration by you as the branch manager of C. D.

Kenny in Asheville, in determining the price at which you are going to sell salt?

A. No, sir, if we can't make money off of it, we don't sell it.

Q. You don't meet competition?

A. No, sir.

Q. You put a certain mark-up on it and you sell it at that price, or you don't sell it?

A. That is correct.

Q. And I believe you testified that the $1.60 price has been in effect for a long time, sir?

A. Yes, sir.

Q. What effect would it have on your business if one of your competitors sold Morton's round package salt to your customers at $1.55 a case, while at the same time you were charging $1.60 a case for it?

A. We would sell them something else that there
1678 was a profit in.

Q. You wouldn't sell him the salt?

A. No, sir.

Q. You wouldn't meet that price?

A. No, sir.

Q. You would lose the business on the salt?

A. Yes, sir.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. As the branch manager of C. D. Kenny Company at Asheville, is it among your duties to place the resale prices on the various items that you offer to the retail trade?

A. Yes, sir.

Q. That would be true on salt, including Morton's blue package, as well as anything else, is that right?

A. Yes.

Q. If I understand you correctly, the amount of the discount, if any, that your company receives, is not determined until the end of the year, and that is handled through Baltimore, is that right?

A. Yes, sir.

Q. So that from one year's end to the next, you don't know whether or not your store or your branch is going to receive any credit on any salt purchases, is that
1679 right, in the form of a quantity discount?

A. Yes, sir.

Q. And I take it that in making your resale price, that that is determined on the basis of $1.50, which is your invoice price?

A. Yes.

Q. And that has been your custom as long as you have handled that type of Morton's blue can?

A. Yes, sir.

Mr. McBride: I think that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Brown, as manager of the C. D. Kenny Company, you place the orders for all of the requirements of the branch at Asheville?

A. No, sir.

Q. Do you place the orders for any of the requirements?

A. No, sir.

Q. Some of them, sir?

A. By the approval of the head office.

Q. With the approval of the head office.

A. Yes, sir.

Q. And is salt among those items?

A. Yes.

Q. And are purchases from the Morton Salt
1680 Company among those items, sir?

A. Yes, they have to pass on anything we buy, or anything we place orders for. If we buy it outright, they have to OK it.

Q. What type of salt do you sell the most of, sir?

A. Well, we sell a good deal of the nickel salt.

Q. Morton's nickel salt?

A. Yes.

Q. Is that your biggest seller?

A. Well, we sell about the same of the nickel salt, and we just sell the whole line.

Q. You sell more of the nickel salt than you do of the round package salt?

A. Yes, sir.

Q. And I believe you stated you get a 5-cent per case allowance on the nickel salt?

A. I think that is right.

Mr. Haslett: I think that is all.

Mr. McBride: I have just one further question.

Recross Examination by Mr. McBride.

Q. You stated that in pricing Morton's blue package, you used the invoice price of $1.50 as the basis upon which you determine your resale price?

A. Yes, sir.

1681 Q. Is that true of all other items that you buy from Morton Salt Company, to use the invoice price as a basis for re-pricing?

A. Yes, sir.

Q. That, I take it, is a typical custom in all commodities that your company handles in this branch?

A. Yes, sir.

Mr. McBride: That is all.

Mr. Haslett: I think that is all, thank you very much, sir.

(Witness excused.)

Mr. McBride: Mr. Examiner, may I make my usual request for permission to withdraw Commission's Exhibits numbered 127 to 134, inclusive, to be photostated, the originals thereafter to be returned to the record?

Trial Examiner Purcell: Granted.

1683

Hearing Room,
Chamber of Commerce,
Columbia, South Carolina,
Friday, May 22, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

1685 Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's Exhibit No. 135-A and B.

(The documents referred to were marked "Commission's Exhibit 135-A and 135-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 135-A is a true and correct carbon copy of a letter under date of September 28, 1940, from the Rose-Phillips Company of Greenwood, South Carolina, to the Morton Salt Company of Chicago, Illinois?

Mr. McBride: That is right.

Mr. Haslett: And that the document marked for identification as Commission's Exhibit No. 135-B is an original letter passing between the Morton Salt Company of Chicago, Illinois, and Mr. W. L. Roddey, president of Rose-Phillips Company of Greenwood, South Carolina, under date of October 8, 1940?

Mr. McBride: That is correct.

Mr. Haslett: I offer the two documents into
1686 evidence.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be admitted in evidence and marked by the reporter as Commission's Exhibit No. 135-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 135-A and B" were received in evidence.)

Mr. Haslett: I will call as my first witness, Mr. Examiner, Mr. Joe E. Timberlake.

JOE E. TIMBERLAKE was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Timberlake?

A. Joe Timberlake, frequently called Joseph, but that isn't my name.

Q. It is Joe?

A. Joe E. Timberlake.

Q. Mr. Timberlake, do you reside in Columbia,
1687 South Carolina?

A. Yes, sir.

Q. And in what business are you engaged, sir?

A. Grocery business, wholesale grocery business.
Q. And with what company are you connected?
A. Thomas & Howard Company out of Columbia.
Q. And what position do you hold with that company?
A. Secretary-treasurer.
Q. And how long have you been connected with the Thomas & Howard Company?
A. Thirty years.
Q. And how long have you been secretary-treasurer?
A. Twenty-five years. It was not incorporated until July 1, 1917.
Q. And you say it is a corporation?
A. Yes, sir.
Q. Incorporated under the laws of what state, sir?
A. South Carolina.
Q. What is the business of the Thomas & Howard Company?
A. Wholesale grocery business.
Q. It sells groceries and allied products to the retailer stores?
A. Yes, sir.
Q. Does it do any retail business at all?
A. No, sir.
1688 Q. It hasn't any retail stores associated with it?
A. No, sir.
Q. Are there other corporations operated under the name of Thomas & Howard?
A. Yes, sir.
Q. And could you, to the best of your ability, name the locations where such corporations are situated?
A. Durham, North Carolina.
Q. Do you know who the officers of that corporation are, sir?
A. I am not sure. I think I can name them.
Q. All right, sir.
A. Mrs. J. W. Thomas, president.
Q. Do you know who the vice-president is, sir?
A. I am not sure, I think it is E. E. Boyce and Lloyd B. Williams.
Q. Mr. Williams is the secretary-treasurer?
A. No, I imagine Mr. Montgomery is secretary, I am not sure. T. H. Montgomery.
Q. What is Mr. Williams' capacity?
A. I think he is vice-president. Now, I have never met

with them on their official meetings, so I am not positive about that.

Q. It is in no way connected with the Thomas & Howard Company of Columbia, South Carolina?

1689 A. No, sir, except through common stock ownership.

Q. Is that the only connection?

A. Yes, sir.

Q. You say it is at Durham, North Carolina?

A. Yes.

Q. Was it incorporated under the laws of the state of North Carolina?

A. Yes.

Q. Now, is there a Thomas & Howard Company of Chester, South Carolina?

A. Yes.

Q. And is that in any way connected with the Thomas & Howard Company of Columbia, South Carolina?

A. Only through common stock ownership. It is a separate corporation.

Q. With separate officers?

A. Yes, sir.

Q. Now, do you know the president of that company?

A. Yes, sir.

Q. Could you name him?

A. Mrs. J. W. Thomas.

Q. And vice-president?

A. Mr. E. E. Boyce.

Q. Secretary and treasurer?

A. Do you want me to name all the officers?

1690 Q. Yes. Do you have another vice-president?

A. Yes.

Q. Who is the other?

A. Mr. J. E. Timberlake.

Q. That is yourself?

A. Yes, sir, and C. L. Howard, and L. C. Horner, secretary and treasurer.

Q. Does Thomas & Howard Company have a place of business at Sumter, South Carolina?

A. Yes, sir.

Q. And incorporated under the laws of what state, sir?

A. South Carolina.

Q. Is that also true as to the Chester organization?

A. Yes, sir.

Q. Incorporated under the laws of the state of South Carolina?

A. Yes, sir.

Q. And is it in any way connected with Thomas & Howard Company of Columbia, South Carolina?

A. No, sir, other than common stock ownership.

Q. Do you know the name of the president of the Sumter, South Carolina of the Thomas & Howard Corporation?

A. Yes, sir.

Q. Who is the president of it?

A. E. E. Boyce.

1691 Q. Do you know the name of the vice-president?

A. J. E. Timberlake.

Q. And that is your good self?

A. Yes.

Q. And secretary and treasurer?

A. E. W. Hartin.

Q. Has Thomas & Howard Company a corporation at Charleston, South Carolina?

A. Yes.

Q. And is it a corporation, sir?

A. Yes.

Q. Organized under the laws of the state of South Carolina?

A. Yes.

Q. And is there any corporate connection between that company and the Thomas & Howard Company of Columbia, South Carolina?

A. No, sir.

Q. Do you know the name of the president of that company?

A. Yes, sir.

Q. What is the name, please?

A. Mrs. J. W. Thomas.

Q. And vice-president?

A. We have three vice-presidents.

Q. Could you name those, if you know them, sir?

A. E. E. Boyce, C. L. Howard and J. E. Timberlake.

1692 Q. And secretary-treasurer, if you know, sir?

A. L. B. Williams.

Q. Has Thomas & Howard Company—

A. Would you excuse me? Would you like for me to add at this time, they have branches at Allendale—

Q. I am going to bring that out right now, sir.
A. Excuse me.
Q. Has Thomas & Howard Company of Charleston, South Carolina, any branches?
A. Yes, sir.
Q. Where are they located?
A. Allendale, South Carolina, and Vidalia, Georgia.
Q. And they are branches of the Thomas & Howard Corporation of Charleston, South Carolina?
A. Yes, sir.
Q. And they are under the direct supervision of the main office in Charleston, is that correct?
A. That is correct.
Q. They are in no way connected with Thomas & Howard Company of Columbia, South Carolina?
A. No, sir.
Q. Is there a Thomas & Howard Company of Greenville, South Carolina?
A. Yes.
Q. And is that a separate corporation?
1693 A. Yes.
Q. And incorporated under the laws of the state of South Carolina?
A. Yes.
Q. Do you know the names of the officers of that company?
A. I think I do. I am not as familiar with that—
Trial Examiner Purcell: Pardon me for the interruption. Mr. McBride, and Mr. Reporter, because of the street noises, if at any time you do not hear the answers distinctly, don't hesitate to break in on the witness, please, and as for you, Mr. Timberlake, would you please speak a little louder, so as to overcome the street noises?
The Witness: Yes, sir.

By Mr. Haslett:

Q. Mr. Timberlake, you say that Thomas & Howard Company of Greenville is a South Carolina corporation?
A. Yes, sir.
Q. Do you know the name of the officers of that company?
A. I think I do.
Q. Would you name them?
A. Mrs. J. W. Thomas.

Q. She is the president?
A. Yes, sir.
Q. Do you know the vice-president?
A. I am not positive, I think it is E. E. Boyce and
1694 J. L. Nichols.
Q. And secretary-treasurer?
A. J. L. Jamison.
Q. And the Thomas & Howard Company of Greenville, South Carolina is in no way connected with the Thomas & Howard Company of Columbia, South Carolina?
A. No, sir.
Q. It is a separate corporation?
A. That is right.
Q. Has the Thomas & Howard Company of Greenville, South Carolina any branches?
A. Yes, sir.
Q. And where are they located, if you know, sir?
A. Seneca, South Carolina.
Q. It just has one branch?
A. Yes.
Q. And that branch is in no way connected with the Thomas & Howard Company of Columbia, South Carolina?
A. No, sir.
Q. Has the Thomas & Howard Company a corporation at Spartanburg, South Carolina?
A. Yes, sir.
Q. And is that incorporated under the laws of the state of South Carolina?
A. Yes, sir.
1695 Q. And is that in any way connected with the Thomas & Howard Company of Columbia, South Carolina?
A. No, sir.
Q. Do you know the name of the president of that company?
A. Yes, Mrs. J. W. Thomas.
Q. Do you know the vice-president's name?
A. E. E. Boyce, J. E. Timberlake and J. L. Nichols.
Q. And the secretary-treasurer?
A. B. G. Suitt.
Q. Has Thomas & Howard Company a corporation located at Charlotte, North Carolina?
A. Yes, sir.
Q. And is it a corporation?

A. Yes, sir.
Q. And incorporated under the laws of what state?
A. I think it is the state of North Carolina, I am not sure about that, but I think that is correct.
Q. Is it in any way connected with the Thomas & Howard Company of Columbia, South Carolina?
A. No, sir.
Q. Do you know the name of the president of that company?
A. Yes, sir.
Q. Would you name him, please?
A. E. E. Boyce.
Q. And the vice-president?
1696 A. I am not positive about this, I think it is C. H. Wentz.
Q. And secretary-treasurer?
A. W. D. Flintom.
Q. Does the Thomas & Howard Company of Charlotte, North Carolina, have any branches?
A. I think they do.
Q. Do you know where they are located, sir?
A. Salisbury and Rocky Mount.
Q. And are those branches under the supervision and direction of the Thomas & Howard Company of Charlotte, North Carolina?
A. Yes.
Q. And in no way connected with the Thomas & Howard Company of Columbia, South Carolina?
A. No, sir.
Q. I believe you named the one at Durham. Is Thomas & Howard Company of Durham a corporation?
A. Yes, sir.
Q. And is Mrs. Thomas the president of that company?
A. I think so, I am not positive.
Q. Is there a Thomas & Howard Company at Greensboro, North Carolina?
A. Yes.
Q. Is that a corporation, also?
A. I think not. I think it is a partnership.
1697 Q. Do you know the partners that have an interest in the Thomas & Howard Company of Greensboro, North Carolina?
A. I think so.
Q. Would you name, them, please?

A. Mrs. J. W. Thomas, J. L. Nichols, and Mack Wilson. I think it is Mack Wilson. I don't know his initials.

Q. Has Mr. Charles O. Howard any interest in that company?

A. No, sir.

Q. That partnership is in no way connected with the Thomas & Howard Company of Columbia, South Carolina?

A. No, sir.

Q. Is there a Thomas & Howard at Hickory, North Carolina?

A. Yes, sir.

Q. And is it a corporation?

A. Yes, sir.

Q. And incorporated under the laws of what state, sir?

A. I think, North Carolina.

Q. Is there any connection with the Thomas & Howard Company at Hickory and the Thomas & Howard Company of Columbia, South Carolina, sir?

A. No, sir.

Q. Do you know the name of the officers of that company?

A. I think so.

Q. Would you name them?

A. E. E. Boyce.

1698 Q. He is the president?

A. President, and W. B. Flintom, vice-president, and O. H. Furr, secretary and treasurer. I think that is correct.

Q. Are there any other corporations operating under the name of Thomas & Howard, that you know of, sir?

A. I think that covers all of them.

Q. Now, confining your testimony to your own organization here in Columbia, could you give the geographical territory covered by your office here, or your warehouse here in Columbia?

A. Just our own operations here?

Q. Yes.

A. About a 50 mile radius, or hardly that.

Q. A 50 mile radius of Columbia?

A. Yes.

Q. Does the Thomas & Howard Company of Columbia have any branches?

A. Yes, sir.

Q. Where are they located, sir?

A. Camden, Darlington, and Newberry.
Q. Are they all in the state of South Carolina?
A. Yes, sir.
Q. Is the purchasing done at the branches, or through the main office of the Thomas & Howard Company?
A. The principal purchasing is done at the branch.
1699 Q. At the branch houses?
A. Yes.
Q. Are the bills paid through the main office?
A. Yes.
Q. Here in Columbia?
A. Yes.
Q. Does Thomas & Howard Company have any competitors?
A. Oh, yes.
Q. Would you name some of those competitors in your Columbia area?
A. Well, there is Hartley Grocery Company, Merchants Wholesale Company, C. D. Kenny Company. Do you want all of them in the area?
Q. Yes, in the area served by Columbia.
A. Geiger Flour Company. Now, they are located in Columbia. In Newberry, J. W. Kibler Company; in Darlington, I think it is—may I ask a question? I can't call the name now—I don't recall the name of the firm now in Darlington.
Q. In Darlington, South Carolina?
A. Yes.
Q. Do you encounter the competition of the Hartley Grocery Company out of Greenwood?
A. Yes.
Q. From your Newberry branch?
A. Yes, sir.
1700 Q. How about the Rose-Phillips Company?
A. Yes.
Q. Are they also competitors of yours?
A. Yes, sir.
Q. And the Spratt Grocery Company at Laurens?
A. Yes.
Q. Do you have any competition coming out of Greenville that you encounter from your Newberry warehouse?
A. I don't recall.
Q. Is R. P. Turner a competitor of yours?
A. I think they compete some.

Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it make any purchases from the Morton Salt Company?
A. Yes.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. Table salt.
Q. Does it purchase any bulk salt?
A. Some.
Q. Does it purchase from other processors of salt besides the Morton Salt Company?
A. Why, sure.
Q. Would you name some of your sources of supply other than the Morton Salt Company?
1701 A. International Salt, Diamond Crystal Salt Company, I have forgotten the others. There are some others.
Q. Jefferson Island?
A. Jefferson Island.
Q. And Carey Salt Company?
A. Occasionally, Carey Salt Company.
Q. What type of salt does your company purchase from the Morton Salt Company?
A. Table salt.
Q. I mean, is it the round package salt?
A. Round and square.
Q. Is that under the blue label?
A. The round package, I think, is under the blue label.
Q. And is it both free running and iodized?
A. Yes.
Q. Is the square package, is that under any particular brand name?
A. I think it is Kleer.
Q. Is that what is known in the trade as 5-cent salt?
A. Yes, sir.
Q. How are orders placed by your company with the Morton Salt Company for its requirements of salt?
A. Through their representative.
Q. Does he call at your place of business?
A. Yes.
1702 Q. And you give him orders, as a result of which commodities are shipped to you by the Morton Salt Company?

A. Yes.

Q. Does he also call upon your two branches to solicit orders for the Morton Salt Company?

A. I think so.

Q. Are all of the invoices for your requirements of Morton salt paid through the principal office of your company here in Columbia?

A. Yes, sir.

Q. Do you know the price which your company is now paying for the round package blue label free running and iodized salt per case?

A. I think it is $1.50.

Q. $1.50 a case?

A. Yes, sir.

Q. Do you know the price at which it is reselling it to the retailer customers?

A. $1.70.

Q. $1.70?

A. Yes, sir.

Q. Has the $1.50 price which your company has been purchasing at from Morton Salt Company been in effect for a long time?

A. Yes.

Q. How long, do you know, sir?

1703 A. No, sir, I don't know.

Q. Has it been several years?

A. Yes, sir.

Q. And it is in effect at the present time?

A. Yes.

Q. How about the resale price of your products, how long has the $1.70 price been in effect?

A. For quite some considerable time, I think.

Q. For the past several years?

A. Yes, sir.

Q. Does your company ever lower or raise the price of its round package salt to the retailer customers?

A. I think it sometimes sells as low as $1.65.

Q. Why does it do that?

A. On quantity orders.

Q. Do you know approximately how many cases the Thomas & Howard Company of Columbia, South Carolina, purchases per year from the Morton Salt Company?

A. No, sir.

Q. Could you estimate that, sir?

A. Well, it would just be a guess, because I don't have that information.

Q. Would you approximate it, if you could, sir?

A. I would say 1500 cases.

Q. About 1500 cases a year?

1704 A. Yes.

Q. And is that for the three branches; I mean, is that the combined purchases?

A. No, I think the combined purchases would be more than that.

Q. Do you know approximately how many that would be?

A. About 2,000 cases.

Q. Do you know approximately the total volume of business done by Thomas & Howard Company of Columbia, South Carolina, with the Morton Salt Company during the year 1941?

A. No, sir.

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's exhibit No. 136-A and B.

(The documents referred to were marked "Commission's Exhibit 136-A and 136-B" for identification.)

By Mr. Haslett:

Q. Mr. Timberlake, I hand you what has been marked for identification as Commission's exhibit No. 136-A, and ask you to state what that is, if you know, just the first sheet, sir?

A. This is a four quarter quantity rebate of 10-cents per case for 3,585 cases.

Q. Is that a statement prepared by the Morton Salt Company and submitted to your company at Columbia?

A. Yes.

1705 Q. It shows the number of cases that the Morton Salt Company have sold to the various organizations operating under the trade name of Thomas & Howard?

A. And affiliated houses.

Q. And affiliated houses?

A. Yes, sir.

Q. What do you mean by "affiliated houses"?

A. Well, there are some under other names that are affiliated with us in common stock ownership.

Trial Examiner Purcell: Has that a date on it?

Mr. Haslett: There is no date on it, sir.

By Mr. Haslett:

Q. The document marked for identification as Commission's exhibit 136-B, what is that, sir?

A. This is a copy of the check.

Q. From the Morton Salt Company?

A. Yes.

Q. Does it have a date?

A. January 19, 1942.

Q. And is the amount shown thereon the same amount that appears on Commission's exhibit 136-A?

A. $358.50.

Q. The same amount that is shown on Commission's exhibit 136-A?

A. That is correct.

1706 Mr. Haslett: I offer the documents in evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked Commission's Exhibit 136-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 136-A and 136-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Timberlake, you spoke of rebates that you receive from Morton Salt Company. What is that rebate, sir?

A. It is based on quantity purchase.

Q. And how much is it, sir?

A. 5,000 cases.

Q. Is that the number of cases that Thomas & Howard are required to purchase in order to be eligible for the rebate?

A. Yes.

Q. And how much is the rebate?

A. Ten-cents per case.

Q. Is that on the free running and iodized salt?

A. Just on the round packages.

Q. That is, the blue package salt?

A. Yes.

Q. And what does your company do with the money when it receives it from the Morton Salt Company,

1707 being a rebate upon the purchases of the various organizations operating under the trade name of Thomas & Howard?

A. It distributes to those entitled to it.

Q. It does distribute it?

A. Yes.

Q. And does the Columbia, South Carolina, company of Thomas & Howard purchase 5,000 cases of Morton's free running salt per year for its own use?

A. No, sir.

Q. Does the Thomas & Howard Company of Columbia, South Carolina, purchase $50,000 worth of salt from the Morton Salt Company during a 12 consecutive months' period?

A. No, sir.

Q. It purchases less than that?

A. Yes.

Q. And it purchases less than 5,000 cases?

A. Yes.

Q. When the Thomas & Howard Company of Columbia, South Carolina, receives its share of the rebate from the Morton Salt Company, what does it do with it?

A. They credit it to—I don't know what they credit it to, I really do not know, because I don't handle the books.

Q. Do you know what the money is used for, sir?

A. No, sir.

Q. Is it put into the general fund?

1708 A. It is put into the general fund of the company, of course.

Q. And used to operate the company, along with other funds?

A. Yes.

Q. I now hand you Commission's Exhibit 136-A, and call your particular attention to the column headed "October", and ask whether or not the Allendale, South Carolina, branch of the Thomas & Howard Company—that is one of your branches, isn't it?

A. No, sir, it is a branch of Charleston.

Q. —the Allendale, South Carolina, branch received 10-cents for each case that it purchased under that particular heading?

A. I am sure they did.

Q. And is that true as to each branch that appears on Commission's Exhibit 136-A, or each company operated under the name of Thomas & Howard?

A. Yes.

Q. Could you estimate from this document the approximate number of cases that each of the organizations

operating under the name of Thomas & Howard purchased during a 12 consecutive months' period from the Morton Salt Company?

A. I could estimate it, but it wouldn't be correct, so it would be useless.

Q. Would that be the average purchase?

A. No, I don't think it would be an average. It
1709 would be higher or lower during some quarter.

Q. It might be lower and it might be higher?

A. Yes.

Q. Mr. Timberlake, is the price which your company pays for its requirements of salt an important factor in your business?

A. Yes, sir.

Q. Is the price at which your competitors sell its salt given consideration by your company in determining the price at which it is going to sell its salt products?

A. We have to be competitive, yes.

Q. What do you mean by "competitive"?

A. Well, meeting competition on salt, we will say.

Q. Well, why do you meet competition?

A. You have to do that to get the business, because people will not pay us a greater profit than they will pay our competitor, or rather, a greater price than they will pay our competitors.

Q. Then, you meet competition in order to stay in business, is that it, sir?

A. Yes, sir.

Q. And if you didn't meet competition, why, you would lose sale business, in the salt line?

A. I think so.

Q. If someone was selling salt at a lower price
1710 than you were, you would have to meet that in order to get that business?

A. Yes, sir.

Q. What effect would it have upon your business if one of your competitors was selling salt at $1.60 a case, while at the same time you were selling it at $1.70 a case?

A. Well, it would have some effect.

Q. Would that be an adverse effect?

A. Possibly.

Q. What other kind of effect could it be, sir? It wouldn't help you, would it?

A. I don't know that it would.

Q. What effect would it have upon your business, Mr.

Timberlake, if one of your competitors was purchasing Morton's round package blue label free running and iodized salt at $1.35 a case, while at the same time you were paying $1.40 a case for it?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: I don't know, sir.

By Mr. Haslett:

Q. You don't know what it would do to your business if someone was purchasing at a cheaper price than you were purchasing?

1711 A. They may be, I don't know.

Trial Examiner Purcell: Did the witness understand the question? Read the preceding question to the witness, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I don't know, sir.

By Mr. Haslett:

Q. You don't know what effect it would have on your business? Do you think he would be in a favorable position if he bought it at a cheaper price than you?

A. Well, he would be making more on his sales than I am.

Q. Do you think the margin of profit would be greater?

A. Yes.

Mr. McBride: I object to that question, Mr. Examiner.

Trial Examiner Purcell: The objection is overruled.

The Witness: Yes.

By Mr. Haslett:

Q. Mr. Timberlake, does your company receive any other discounts or allowances from the Morton Salt Company, other than the 10-cents per case allowance?

A. They receive a quantity allowance of 5-cents per case on the Kleer.

Q. On the Kleer salt?

A. Yes, sir.

1712 Q. What are the requirements for that allowance?

A. The requirement is that you purchase $50,000 worth from all salt concerns.

Q. And does the Thomas & Howard Company of Columbia, South Carolina, purchase $50,000 worth of salt from

all sources of supply for its own use during a 12 consecutive months' period?

A. No, sir.

Q. How is that paid, sir?

A. I think that is paid by a credit memorandum sent along with the invoice. I think that is correct.

Mr. Haslett: Mr. Reporter, I hand you three documents and ask that they be marked for identification as Commission's Exhibit No. 137-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 137-A, 137-B and 137-C" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 137-A is a true and correct photostat copy of an invoice passing between the Morton Salt Company and the Thomas & Howard Company of Columbia, South Carolina, numbered 28625, under date or February 6, 1941?

Mr. McBride: That is correct.

1713 Mr. Haslett: And am I correct when I say it is stipulated that the document marked for identification as Commission's Exhibit 137-B is a credit memorandum from the Morton Salt Company, numbered 66330, under date of March 7, 1941, directed to the Thomas & Howard Company of Columbia, South Carolina?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's Exhibit No. 137-C is a credit memorandum from the Morton Salt Company, numbered 65732, under date of February 6, 1941, directed to Thomas & Howard Company of Columbia, South Carolina?

Mr. McBride: That is correct.

Mr. Haslett: I offer the three documents into evidence, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked Commission's Exhibit 137-A, B, and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 137-A, 137-B, and 137-C" were received in evidence.)

By Mr. Haslett:

Q. Mr. Timberlake, I hand you Commission's
1714 Exhibit 137-A and ask you to state whether that represents the typical invoice received from the Morton Salt Company for the type of commodities shown thereon?

A. Yes, sir.

Q. And I hand you Commission's Exhibit 137-C, and ask you whether or not that represents a typical credit memorandum received from the Morton Salt Company by the Thomas & Howard Company of Columbia, South Carolina, upon the purchases of Kleer salt, being a credit memorandum for such purchases?

A. Yes.

Q. Now, has the Thomas & Howard Company any special accounts to which it applies the credit memorandums that it receives from the Morton Salt Company upon the purchases of the Triangle table salt?

A. No, sir.

Q. It is applied to the general obligations owed to the Morton Salt Company, and deducted from the check made payable to the Morton Salt Company?

A. Yes, sir.

Q. Do you know approximately how many cases of Triangle table salt that your company in Columbia, South Carolina, purchases from the Morton Salt Company during a 12 consecutive months's period?

A. No, sir.

Q. Does the Thomas & Howard Company also
1715 receive the discount of 5-cents per case on Morton's Kleer salt, in addition to the Triangle table salt?

A. I think so, I am not sure.

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's Exhibit 138-A and B.

(The documents referred to were marked "Commission's Exhibit 138-A and 138-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated between counsel for the respondent herein and counsel for the Commission that the document marked for identification as Commission's Exhibit 138-A is a true and correct photostat copy of an invoice passing between the Morton Salt Company, and the Thomas & Howard Company of Columbia, South Carolina, numbered 45749, under date of May 23, 1941?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's Exhibit No. 138-B is a credit memorandum from the Morton Salt Company, numbered 67842, under date of May 23, 1941, directed to the Thomas & Howard Company, Columbia, South Carolina?

Mr. McBride: That is correct.

Mr. Haslett: I offer the two documents into evidence, Mr. Examiner.

1716 Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked Commission's Exhibit 138-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 138-A and 138-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Timberlake, I hand you what has now been admitted into evidence as Commission's Exhibit No. 138-A, and ask you to state whether or not the document represents the typical invoice passing between the Morton Salt Company and the Thomas & Howard Company for the type of commodities that appear thereon?

A. Yes, sir.

Q. And I hand you what has been now admitted into evidence as Commission's Exhibit 138-B, and ask you to state whether or not the document represents a typical credit memorandum from the Morton Salt Company to the Thomas & Howard Company of Columbia, South Carolina, for the type of commodities that appear thereon, sir?

A. Yes, sir.

Q. Now, is there any other discount that Thomas & Howard Company receives from the Morton Salt
1717 Company upon its purchases of any type of salt, other than what you have just been testifying to, that is, the Kleer table salt and the round package salt?

A. No.

Q. Do you get any discount on the bulk salt in 100 pound bags?

A. I don't think so.

Q. How about the block salt that is sold to the farmers?

A. No, sir.

Q. Then, am I correct when I state that the discounts received by Thomas & Howard from the Morton Salt Company is a 10-cent discount on the round package free running salt, and a 5-cent discount on the 5-cent salt, or the Kleer table salt?

A. Kleer and Triangle, I think.

Q. I hand you now Commission's Exhibit 138-A, and call your particular attention to the price of the Kleer table salt per case, and ask you to note such price. What is that price, please, sir, per case?

A. The 36/1's?

Q. Yes.

A. Seventy-five cents.

Q. And that is the type of salt that you received the 5-cent discount per case on from the Morton Salt Company?

A. Yes.

1718 Q. And what effect would it have upon your business if one of your competitors was purchasing that particular type and grade of salt from the Morton Salt Company at $0.65-cents a case, while at the same time you were paying 70-cents a case for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: I don't know, sir.

By Mr. Haslett:

Q. Do you think he would be in a favorable position?

A. Well, he would have bought 5-cents a case cheaper than us.

Q. Well, do you think he would be in a favorable position by buying it cheaper than you?

A. Well, it is 5-cents less, yes.

Q. And what is the price that you resell that to your customers for, sir?

A. I don't recall what this salt purchased May 23, 1941 was resold for. I don't remember our price at that time.

Q. Do you know what it is today, sir?

A. Yes.

Q. What is the price today?

A. Ninety-five cents.

Q. What effect would it have upon your business 1719 if one of your competitors was selling it at 90-cents, while at the same time you were selling it for 95-cents a case?

A. I imagine that the competitor would get the order.
Q. Would that in any way injure your business?
A. It would keep me from selling that order.
Q. Unless you reduced your price to meet his?
A. That is right.
Q. Does your company receive any discount from the Morton Salt Company upon Morton's seasoning salt?
A. I don't know, sir.
Q. How about Morton's sausage seasoning?
A. I don't think so.
Q. Does your company purchase salt from the Morton Salt Company on a carload basis, buying a full car for its own use?
A. At times.
Q. Does it receive any discount from the Morton Salt Company on the carload basis?
A. No, sir, none other than is shown on the invoice.
Q. And that would be the list price that was shown on the invoice?
A. Yes, a credit memorandum would be attached if there was any allowance.
Q. How much of a discount does your company receive on Morton's smoke salt?
1720 A. I don't recall any.
Q. Does your company receive any discount from the Morton Salt Company on Kleer blocks?
A. Not to my knowledge.
Q. What is a Kleer block?
A. It is salt that the farmers use.
Q. In the fields?
A. Yes, sir.
Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's Exhibit No. 139?
(The document referred to was marked "Commission's Exhibit 139" for identification.)
Mr. Haslett: Is it stipulated, Mr. McBride, that the document marked for identification as Commission's Exhibit 139 is a credit memorandum from the Morton Salt Company, under date of May 10, 1939, to the Thomas & Howard Company of Columbia, South Carolina?
Mr. McBride: That is correct.
Mr. Haslett: I offer the document, Mr. Examiner.
Trial Examiner Purcell: Any objection?
Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 139.

1721 (The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 139" was received in evidence.)

By Mr. Haslett:

Q. Mr. Timberlake, I hand you Commission's Exhibit 139, which has been admitted into evidence, and ask you to state the reason for the reception of this credit memorandum by the Thomas & Howard Company?

A. That was a decline in price.

Q. A decline in whose price?

A. Morton Salt Company's.

Q. I see.

A. It says so.

Q. Well, was that salt already sold to you?

A. This was stock on hand that we had purchased at a higher price, I imagine.

Q. And you had it in your warehouse?

A. Yes, sir.

Q. And the price had dropped, is that what you mean to say, sir?

A. I think so, that is what it looks like.

Q. And did Morton Salt Company cover the decline in price by a credit memorandum?

A. Yes, sir.

Q. Would you explain in some detail how that is

1722 brought about?

A. Well, it has been customary for salt people to protect their distributors or wholesalers on decline in price on their commodities, and I presume that this was done generally by everyone.

Q. And when you say "protect", what do you mean, sir?

A. Should the price decline.

Q. That the processor will stand the difference between the sale price to the customer and the declined price?

A. Yes.

Q. Do you know why that was done?

A. I think it is a custom.

Q. You don't know how it originated, sir?

A. No, sir.

Q. Do you know the reason for it?

A. No, sir.

Q. Has your company received many such credit memoranda from the Morton Salt Company covering a decline in price?

A. No, sir.

Q. Is it sporadic?

A. Well, I think you have copies of all of our invoices, and it is seldom done, but it is done when there is a decline.

Q. I haven't copies of all of your invoices.

A. Well, we offered them to you.

1723 Q. Well, I just took a representative number, Mr. Timberlake. Does the Columbia office of the Thomas & Howard Company act as purchasing agent for all commodities sold to all corporations operating under the trade name of Thomas & Howard?

A. No, sir.

Q. How was the arrangement brought about whereby the Thomas & Howard Company of Columbia, South Carolina was to become the clearing office for the requirements of Morton's salt for the various corporations operating under the trade name of Thomas & Howard?

A. I don't know, sir.

Q. Do you know how that arrangement started, sir?

A. No, I don't know.

Q. What was the purpose of it, if you know, sir? What was the reason for it?

A. I wouldn't know that.

Q. Wasn't the reason in order to be eligible to get this discount?

A. It possibly was.

Q. You stated, Mr. Timberlake, that your company does not purchase—the Thomas & Howard Company of Columbia, South Carolina, does not purchase in the required amount to be eligible for the discount, so the only reason could be, to have the combined purchases of the other

1724 Thomas & Howard companies to get the discount, is that correct, sir?

A. Yes, we thought that all affiliated houses were entitled to it.

Q. Has the Thomas & Howard Company of Columbia, South Carolina, many stockholders?

A. No, sir.

Q. It hasn't many?

A. No.
Q. Has it more than the officers?
A. No, sir.
Q. The officers own the stock?
A. There is one other that wasn't named, one other stockholder that is an officer that wasn't named.
Q. What is that name, sir?
A. Mrs. J. E. Timberlake.
Q. Mrs. J. E. Timberlake is not in any other way connected with the company, other than a stockholder?
A. Vice-president.
Q. Does she take an active interest in the company?
A. Not a great deal.
Q. Does she direct any of its policies?
A. Somewhat.
Q. Does she have an office at the principal place of business?
A. She does not.
1725 Q. She does not?
A. No, sir, she signs necessary papers.
Q. Just necessary legal papers?
A. That is right.
Q. Has the Thomas & Howard Company of Columbia, South Carolina any special accounts on its books where its allowances and discounts received from various processors is credited?
A. No, sir.
Q. What is the connection between the Thomas & Howard Company of Columbia, South Carolina, and the Timberlake Grocery Company at Macon, and Thomasville, Georgia?
A. Common stock ownership.
Q. Is that the only connection?
A. That is the only connection.
Q. You haven't anything to do with that company, have you?
A. The corporation hasn't anything to do with it.
Q. The corporation hasn't anything to do with it?
A. No, sir.
Q. Each one of these Thomas & Howard corporations are separate and distinct, and operate as such, is that correct?
A. They are separate and distinct, yes.

Q. And they do operate as such, I mean, they do their own purchasing?

A. Yes, sir.

1726 Q. They have their own office help and they have their own files?

A. Yes.

Q. The corporation at Charlotte, North Carolina, is a separate corporation no way connected with the Columbia corporation, is it, sir?

A. I think I answered that.

Trial Examiner Purcell: Answer it again, please.

The Witness: No.

By Mr. Haslett:

Q. Their principal office and place of business is at Charlotte?

A. Yes, sir.

Q. And is that true as to the other corporations, their principal offices and places of business are at the locations which you named when I asked you in regard to the corporate setup?

A. Yes, sir.

Q. And are purchases done by those companies through the principal offices of each place, is that correct, sir?

A. Yes.

Q. Is this the only instance where the Thomas & Howard Company combine their purchases in order to get a quantity discount that they would not otherwise be entitled to?

A. I don't know how to answer that.

1727 Mr. McBride: Mr. Examiner, I will have to object to that question. Counsel has drawn a conclusion in his question that they aren't entitled to it. That is not for counsel to draw.

Trial Examiner Purcell: Off the record here.

Mr. McBride: I wish this to show on the record, if the Examiner doesn't mind.

Trial Examiner Purcell: Excuse me. I thought you had concluded your statement. Go right ahead, but I want the discussion off the record.

Mr. McBride: There, I make the objection that he can't place a legal conclusion in his question to this witness.

Trial Examiner Purcell: Now, off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. I will uphold the objection.

Mr. Haslett: Note an exception to the Examiner's ruling.

By Mr. Haslett:

Q. Is this the only instance where the Thomas & Howard Corporations combine their purchases in order to get a quantity discount?

A. No, sir.

Q. Are there other instances?

1728 A. Yes.

Q. Are they numerous?

A. No, sir.

Q. Who handles the situation for the various corporations?

A. Different ones.

Q. Do you take any leading interest in the obtaining of these various discounts from the various processors?

A. No, sir.

Q. Did you have anything to do with the arrangement between your company and the Morton Salt Company in regard to this discount, sir?

A. I think I did.

Q. Would you tell us about those arrangements?

A. I am sorry, I don't recall them well enough to tell you.

Q. How long has it been in effect, the discount schedule?

A. Since the salt organizations formed a group of quantity purchases, I think.

Q. You mean, the Salt Producers Association?

A. Yes, the Salt Producers Association. Our quantity was filed with them.

Q. With the Salt Producers Association?

A. Yes.

Q. And were you notified that you were qualified?

A. Yes.

Q. The Thomas & Howard of Columbia, South Carolina?

1729 A. Yes, sir.

Q. Had qualified?

A. Thomas & Howard Company and their affiliated companies.

Q. But no single unit would purchase that, is that correct?

A. No, no single unit, but the ownership of the Thomas & Howard Company, the controlling ownership, is practically the same.

Q. But they are all separate corporations?

A. Oh, yes.

Q. Does your company ever purchase salt from the Morton Salt Company on less than a carload basis?

A. Yes.

Q. It does, sir?

A. Yes.

Q. And does it purchase any of the round package salt on less than carload basis?

A. Well, I think the pool cars are made up occasionally by their broker.

Q. Well, a pool car wouldn't be less than a carload shipment, then, would it, sir?

A. I don't think it would. I think it is all shipped in pool cars.

Q. And made a full car?

A. Yes.

Q. Do you purchase in less than carload lots where
1730 you don't purchase on a pool car basis?

A. No, sir.

Q. You purchase either on a pool car basis or a full car basis?

A. Yes, sir.

Q. Do you receive the same price for the pool basis as you do for the full car?

A. Yes.

Q. Does the Morton Salt Company have a broker that is located at Columbia?

A. Yes.

Q. What is his name, sir?

A. Johnson & Simmons.

Q. Do they call upon you, soliciting your business for the Morton Salt Company?

A. Yes.

Q. Do you place orders with them, also, sir?

A. At times.

Q. And you also place orders with the salesman of the Morton Salt Company?

A. Yes.

Q. What is his name?
A. Mr. McAllister.
Q. Mr. McAllister?
A. Yes.

1731 Q. In both instances when you place orders with the various representatives of the Morton Salt Company, commodities are shipped to you direct from the Morton Salt Company and billed direct from the Morton Salt Company, is that correct?

A. That is correct.
Q. Do you sell any salt to any of your competitors?
A. I don't know, sir. I possibly do at times. We buy from one another if there is a shortage. We have a trading agreement among ourselves.
Q. It wouldn't be a general policy?
A. No, sir.
Q. In those instances where you do sell to your competitors, do you allow them the discounts that you receive from the Morton Salt Company?
A. No, sir, we have an arrangement between ourselves on a basis of purchase.
Q. And do you sell them at the cost price or the invoice price of $1.50?
A. No, sir.
Q. Is it more than that, sir?
A. I don't recall what we are charging, but it is a price agreed upon between ourselves, to buy and sell.

Trial Examiner Purcell: The answer of the witness is rather ambiguous. Would you say that your resale price to your competitors is higher or lower than the price

1732 at which you were billed by the Morton Salt Company?

The Witness: It is higher than the price at which we are billed.
Trial Examiner Purcell: Higher than $1.50?
The Witness: Yes.

By Mr. Haslett:

Q. So, you make a profit on your sales of salt to your competitors?
A. If any sales are made.
Q. It would be sporadic?
A. It would be the same way if we ran out, we would buy from our competitors, and we would pay them possibly the same price that we charge them. That is what I mean

by the arrangement between ourselves. We do no trading or swapping of merchandise, was what I was trying to put over.

Q. Does your company receive any cash discount from the Morton Salt Company upon its purchases, if the bill is paid within a specified time?

A. May I look at that? I don't know of any, sir.

Q. I will show you one here.

A. No.

Q. Would it show on the invoice if you did, sir?

A. Yes, sir.

Q. Does your company do any promotional work in connection with the resale of Morton's salt to its retailer customers?

1733 A. We issue bulletins to our salesmen, and feature their salt.

Q. How is the salt featured? Is it advertised in the bulletin?

A. Well, we run sales weeks, and things of that kind.

Q. Sales weeks?

A. Yes.

Q. And when you run a sales week on Morton's salt, do you reduce the price?

A. No, sir.

Q. The price remains the same?

A. Yes, sir.

Q. Would your business be in any way affected by the fact that one of your competitors might offer for a limited time, Morton's round package salt at $1.50 a case, while at the same time you were selling it at $1.70 a case?

A. Yes.

Q. The time element wouldn't make any difference, if it was just one day or ten days, it would still affect your business?

A. Yes.

Q. Mr. Timberlake, the document marked as Commission's Exhibit 136, I hand you herewith, and ask you to state whether it is typical of the quarterly documents received from the Morton Salt Company showing the purchase by the various corporations operating under the name of Thomas & Howard?

1734 A. Yes.

Q. And you have been receiving such statements from the Morton Salt Company since you have been receiving discounts.

A. Yes, sir.

Q. Does Thomas & Howard Company of Columbia do quite a bit of business in salt?

A. Some.

Q. Well, it is large or small?

A. It isn't large.

Q. It is not large?

A. No.

Q. Combined purchasing of all the companies operating under the name of Thomas & Howard is a sizable item, its business?

A. I don't know that I have that question.

Q. Well, I will reframe it, sir. Would the combined purchases of all of these various corporations operating under the trade name of Thomas & Howard do quite a sizable business in salt?

A. Yes.

Q. But the separate organizations wouldn't be of a great deal of importance to each corporation?

A. No, we are not large.

1735 Q. It would have to be the pooling of the purchases to become sizable, is that correct, sir?

A. Yes, sir.

Q. Who is your principal competitor in this particular market, sir?

A. Would you repeat that, please?

Q. I say, who is your principal competitor in this market?

A. Hartley Grocery Company, Merchant's Wholesale, and C. D. Kenny Company.

Q. Any competitor is a principal competitor, isn't it?

A. Yes.

Q. When your company receives a check from the Morton Salt Company, does it deposit the check in its general account, and then make apportionments therefrom to the various corporations operating under the name of Thomas & Howard?

A. Yes.

Q. And that is done every four months?

A. At intervals. I don't know the exact time.

Q. Is that done when you receive the check?

A. Shortly thereafter.

Q. But the checks are not allowed to pile up, but you make disbursements right after you receive the check from the Morton Salt Company?

A. Soon thereafter.

Q. Now, when the salt is received by your com-
1736 pany from the Morton Salt Company, is it placed on your siding?

A. If the car is shipped to us; it is.

Q. I see, if it is a full car, it is placed on your siding?

A. Yes.

Q. And what happens when it is a pool car? What siding is it placed on at that time?

A. Usually on the broker's siding.

Q. And who hauls the salt from the broker's warehouse or siding to your place of business?

A. We do.

Q. In your own trucks?

A. Yes, sir.

Q. How much are you compensated by the Morton Salt Company for that service?

A. We are not compensated.

Mr. Haslett: I think that is all. I have no further questions.

Trial Examiner Purcell: We will take a five minute recess, gentlemen.

(A short recess was taken.)

Trial Examiner Purcell: Come to order, gentlemen, please.

Cross-Examination by Mr. McBride.

1737 Q. Mr. Timberlake, I believe you testified that the officers of Thomas & Howard Company of Columbia, South Carolina, was Mrs. J. W. Thomas, president, yourself as vice-president—no, Mrs. J. E. Timberlake as vice-president, and yourself as secretary-treasurer, is that correct?

A. Mr. C. L. Howard and E. E. Boyce are also vice-presidents.

Q. I see. Now, who were the members of the board of directors of that company?

A. Mrs. J. W. Thomas, Mr. E. E. Boyce, C. L. Howard, Mrs. J. E. Timberlake and J. E Timberlake.

Q. Do you recall the date on which that company was incorporated?

A July 1, 1917.

Q. The original incorporators were Mr. C. L. Howard and yourself, is that correct?

A. The original incorporators were C. C. Thomas, C. L. Howard, and J. E. Timberlake.

Q. And the original board of directors was C. L. Howard, C. C. Thomas and yourself?

A. Yes.

Q. The original officers, Mr. C. C. Thomas as president, Mr. C. L. Howard, vice-president, and yourself as secretary-treasurer, is that correct?

A. Yes.

1738 Q. Now, with respect to the Thomas & Howard Company of Chester, do you recall the date of incorporation of that company?

A. No, sir, I do not, about 1925, I think.

Q. Would it be on or about July 12, 1926?

A. Somewhere in that neighborhood.

Q. Somewhere in that neighborhood, as near as you can recall?

A. Yes.

Q. Do you recall the original incorporators of that company?

A. C. C. Thomas, C. L. Howard, J. E. Timberlake and L. C. Horner.

Q. The same ones as the incorporators in Columbia with the exception of Mr. Horner?

A. That is right.

Q. And the original officers of that company, if you recall?

A. C. C. Thomas as president, C. L. Howard and J. E. Timberlake, vice-presidents, and L. C. Horner as secretary and treasurer.

Q. And the original directors were Mr. Thomas, Mr. Howard and yourself, and Mr. Horner, is that correct?

A. Yes, sir.

Q. Now, will you name the present members of the board of directors of the company at Chester?

1739 A. Mrs. J. W. Thomas, E. E. Boyce, C. L. Howard, L. F. Timberlake and L. C. Horner.

Q. Does the company at Chester have any branch office?

A. No, sir.

Q. The one at Columbia, I believe you said, had branches at Camden, Darlington and Newberry, is that correct?

A. Yes, sir.

Q. Now, the same individuals who hold the controlling stock in the Columbia company also hold the controlling stock of the company at Chester?

A. Yes, sir.

Q. I believe you stated that the officers and directors of the company at Columbia held the controlling stock of the company at Columbia, is that correct?

A. How is that?

Q. I believe you stated that the officers and directors of the company here in Columbia held the controlling stock of the company in Columbia?

A. Yes, sir.

Q. Now, with respect to the company at Spartanburg, do you recall the date of incorporation of that company?

A. No, sir.

Q. Would it be on or about September 17, 1924, if you recall?

A. I think that is about correct.

1740 Q. Somewhere in that time?

A. Yes, sir.

Q. And the original incorporators of that company, if you recall?

A. C. C. Thomas, C. L. Howard, J. L. Nichols, B. G. Suitt, and J. E. Timberlake.

Q. And the original board of directors of that company?

A. That was the original board of directors.

Q. And the original officers, if you recall, of that company, still referring to Spartanburg?

A. Yes.

Q. Was the president C. C. Thomas?

A. C. L. Howard, J. L. Nichols, J. E. Timberlake and B. G. Suitt. Mr. Thomas was president, Mr. Howard and Mr. Nichols and myself vice-presidents, and B. G. Suitt, secretary and treasurer.

Q. And who are the present members of the board of directors of the Spartanburg Company?

A. Mrs. J. W. Thomas, E. E. Boyce, J. L. Nichols, J. E. Timberlake and B. G. Suitt. I think that is correct.

Q. Now, do the same persons who hold the controlling stock of the company at Columbia also hold the controlling stock of the Spartanburg company?

A. Yes, sir.

Q. There are no branch houses of the Spartanburg company?

1741 A. No, sir.

Q. Now, with respect to the Charleston company, do you recall approximately the date of its incorporation?

A. No, sir, I don't know the date.

Q. Would it be on or about January 2, 1928, if you recall, or somewhere in that neighborhood?

A. I think so.

Q. Who were the original incorporators of that company, if you recall?

A. C. C. Thomas, C. L. Howard, L. B. Williams, D. S. Flintom, and J. E. Timberlake.

Q. And the original board of directors, if you recall?

A. The same persons.

Q. And who were the officers, indicating their position, the original officers of that company?

A. C. C. Thomas as president, C. L. Howard and J. E. Timberlake, vice-presidents, and L. B. Williams, secretary and treasurer.

Q. And now the current board of directors of that company?

A. Mrs. J. W. Thomas, E. E. Boyce, D. S. Flintom, J. E. Timberlake and L. B. Williams.

Q. And that company operates branch houses at Allendale, South Carolina and Vidalia, Georgia?

A. Yes, sir.

Q. Now, do the same persons who hold the controlling stock of the Columbia company also hold the con-
1742 trolling stock of the Charleston company?

A. Yes.

Q. Now, with respect to the Thomas & Howard Company at Sumter, was that company incorporated on or about January 3, 1931, if you recall?

A. I think so.

Q. In that neighborhood?

A. Yes.

Q. And again with respect to that company, do you recall the original incorporators?

A. C. C. Thomas, C. L. Howard, J. E. Timberlake and E. W. Hartin.

Q. And the original board of directors, if you recall?

A. The same persons.

Q. Do you recall the original officers of the company?

A. C. C. Thomas, president, C. L. Howard and J. E. Timberlake, vice-presidents, and E. W. Hartin, secretary and treasurer.

Q. And now the current members of the board of directors of that company?

A. E. E. Boyce, J. E. Timberlake and E. W. Hartin.

Q. That company, as I understand it, operates no branch houses?

A. No, sir.

Q. Now, do the stockholders who hold the con-
1743 trolling stock of the Columbia company also own the controlling stock of the Sumter company?

A. Yes.

Q. Can you name the current board of directors of the company at Durham, North Carolina?

A. I am not positive.

Q. As nearly as you can recall?

A. Mrs. J. W. Thomas, E. E. Boyce, D. H. Montgomery and L. B. Williams.

Q. Do you recall approximately when that company was incorporated?

A. About two years ago, I think.

Q. Do you know who the original incorporators were?

A. The same.

Q. The persons you just named as the current board of directors?

A. Yes, sir.

Q. Now, is the stock of that company controlled or owned by the same stockholders as the Columbia company?

A. I think so, I am not positive.

Q. Now, with respect to the company at Charlotte, North Carolina, do you recall the date of incorporation of that company?

A. No, sir.

Q. Has that been in existence for a number of years?

1744 A. Yes, sir.

Q. That company, I believe you stated, had branches at Salisbury, North Carolina, and Rocky Mount, North Carolina?

A. Yes.

Q. The Durham, North Carolina, company has no branches?

A. No, sir.

Q. Can you name the current members of the board of directors of the Charlotte, North Carolina, company?

A. I am not positive, I think I can.

Q. To the best of your recollection, please.

A. E. E. Boyce, W. D. Flintom, C. H. Wentz.

Q. And were they the original incorporators of the company?

A. No, sir.

Q. Who were the original incorporators of the company?

A. C. C. Thomas, C. L. Howard, C. H. Wentz and W. D. Flintom.

Q. And did those same individuals constitute the original board of directors?

A. Yes.

Q. And the original officers of the company?

A. Yes.

Q. And with respect to that company, is the controlling stock of that company owned by the same individuals who have stock in the Columbia company?

A. I don't know just how to answer that, because Mr. Boyce, who owns the stock in the Charlotte house, is
1745 also a stockholder in the Columbia house. As to what the extent of his ownership is in Charlotte, I do not know.

Q. But Mr. Boyce does have a common stock ownership in the two companies?

A. Yes, sir.

Q. Is there any other person in addition to Mr. Boyce who has a common stock ownership between the Charlotte and Columbia companies?

A. No, sir.

Q. Greensboro, North Carolina, I believe you stated, was a partnership between Mr. J. W. Thomas, J. L. Nichols and who was the third one?

A. Mack Wilson.

Q. How long has that partnership been in existence, do you know?

A. No, sir.

Q. And that particular partnership operates no warehouses other than the one at Greensboro, is that right?

A. No, sir.

Q. Now, the company at Hickory, North Carolina, about when was that incorporated?

A. I don't know the date.

Q. Do you recall the original incorporators?

A. I think it was E. E. Boyce, O. H. Furr and W. D. Flintom.

Q. And they were the original board of directors, also?

1746 A. Yes, sir.

Q. And the original officers?

A. Yes, sir.

Q. Can you name the current board of directors?

A. I think the current board is the same.

Q. Now, would the same thing be true with respect to that company as with respect to the Charlotte, North Carolina company, as to E. E. Boyce's stock holdings?

A. Yes, sir.

Q. He is a common stockholder between the Hickory and the Columbia company?

A. Yes, sir.

Q. Is there any other common stock ownership between these two?

A. No, sir.

Q. Now, with respect to the company at Greenville, was that organized on or about July 19, 1917?

A. I think so.

Q. And the original incorporators, if you know, sir?

A. C. C. Thomas, C. L. Howard, J. L. Nichols, John Rose, B. G. Suitt.

Q. Did those same gentlemen constitute the original board of directors?

A. I think so, I am not sure.

Q. And they also held the officership of the company?

A. Yes.

1747 Q. Do you recall the names of the current board of directors?

A. I am not positive, I think they would be—

Q. As nearly as you can recall.

A. —Mrs. J. W. Thomas, E. E. Boyce, J. L. Nichols and J. L. Jamison.

Q. And that house, I believe you said, had a branch at Seneca?

A. Yes, sir.

Q. That is the only branch it operates?

A. Yes, sir.

Q. Now, would Mr. Boyce also be the common stockholder between the Greenville company and the Columbia company?

A. Mrs. Thomas and Mr. Boyce.

Q. They are the two common stockholders between the two companies?

A. Yes.

Q. I believe you stated also that your company had some other affiliates operating under different names. I think you indicated the common stock ownership with the Timberlake Grocery Company?

A. Yes, sir.

Q. Would the Christianburg company be, at Pulaski, Virginia?

A. Yes, sir.

1748 Q. Can you name the officers of the Christianburg Canning Company?

A. Present or original?

Q. Present, yes.

A. W. D. Flintom, president, E. E. Boyce, vice-president, J. E. Timberlake, vice-president, and J. K. Harrison, secretary and treasurer.

Q. And those men constitute the board of directors currently?

A. Yes, sir.

Q. And the same persons who control the stock of the Columbia company control the stock of that company, do they? That is, the Christianburg Canning Company?

A. I think so.

Q. Which company, Mr. Timberlake, operates a branch at Fayetteville, North Carolina?

A. That is a separate corporation.

Q. What is the name of that company?

A. Thomas & Howard Company.

Q. Of Fayetteville?

A. Of Fayetteville, yes.

Q. And incorporated under the laws of North Carolina?

A. Yes.

Q. Who are the members of the board of directors of that company?

1749 A. I think they are E. E. Boyce, W. D. Flintom, C. H. Wentz, and Mr. Lewis, I don't know his initials.

Q. And who are the officers of the company?

A. I think they are the same.

Q. Mr. Boyce is the president?

A. Yes.

Q. Is Mr. Boyce the only common stockholder between that company and the Columbia company?

A. Yes.

Q. Do you recall how long ago that company was organized?

A. No, sir, I don't recall.
Q. Several years ago?
A. Not so many years ago, no.
Q. Was the corporate affiliation, referring to the various companies to which you have just testified, organized in that manner in lieu of having one company with several branch houses?

Mr. Haslett: Would you read that last question back, Mr. Reporter, please?

(The question referred to was read by the reporter.)

The Witness: Yes.

By Mr. McBride:

Q. Well, in effect, the operation was a branch operation under separate corporate structure, is that correct?

Mr. Haslett: I object to that.

1750 Trial Examiner Purcell: Read the last question back, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

Mr. Haslett: I will withdraw my objection.

Trial Examiner Purcell: Let the record show the objection is withdrawn. You may answer.

The Witness: Yes. May I at this time say just why they were operated that way?

By Mr. McBride:

Q. I have no objection.

Trial Examiner Purcell: Has Mr. Haslett any objection?

Mr. Haslett: I have no objection, sir.

The Witness: It was done in order that the manager of that particular house might participate in the profits of his own house.

Mr. Haslett: Now, that answer doesn't coincide with the question. Will you read the question back, so the witness can hear the question? You say, "yes," and the explanation you just made would be "no."

(The question referred to was read by the reporter.)

Mr. Haslett: The statement doesn't seem to
1751 coincide with his answer.

Mr. McBride: Unless we argue it out in briefs, I don't think we ought to go back over it and tell this witness he wasn't consistent. He answered the question and made

his statement. If there is a point to be made, I think now the witness should do it.

Trial Examiner Purcell: There is no objection before the Examiner. We have had enough argument on the record. You may proceed and straighten up any discrepancies that you think are evident, Mr. Haslett, on your redirect examination. Proceed.

By Mr. McBride:

Q. I believe you testified, Mr. Timberlake, that your resale price on Morton's blue package in Columbia was $1.70?

A. Yes, sir.

Q. Occasionally on quantity purchases, you would sell it for $1.65, is that correct?

A. Yes, sir.

Q. Now, was that price, $1.70 in effect at the branches of the Columbia house?

A. Yes, sir.

Q. In Camden, Darlington, and Newberry?

A. Yes, sir.

Q. And that price has been in effect for several years at those branches, as well as the Columbia house, is 1752 that right?

A. Yes.

Q. I think you testified, also, that the price for Kleer and the Triangle, being the square packages, was 95-cents here in the Columbia house, the present price?

A. Yes, sir.

Q. And is that price in effect in the three branches?

A. So far as I know.

Q. I show you Commission's exhibit No. 139, Mr. Timberlake, with respect to which I think you testified that that may have been a refund covering a decline in price as applied to some stock that you had left on hand at that time?

A. Yes, sir.

Q. You don't recall the circumstances of that particular credit memorandum, do you?

A. No, sir.

Q. That could have been a credit memorandum with respect to an order that had been placed just prior to the decline and hadn't been shipped, is that right?

A. Yes, I think so.

Q. So, without knowing and going back into your rec-

ords, you wouldn't know the circumstances under which that credit was given?

A. No, the credit says, "Decline of March 23rd."

Q. It gives no other indication than that, the pur-
1753 pose and circumstance under which it was given?

A. No, sir.

Trial Examiner Purcell: In that connection, didn't the witness heretofore testify, Mr. McBride, that that was for stock which he had already on hand, and that it was the general custom of the salt industry to protect its distributors under those circumstances?

Mr. McBride: He said he thought it might have been an instance of that sort, but he didn't recall whether it was or wasn't.

Trial Examiner Purcell: Then, it could just as well have been one as the other?

Mr. McBride: That is right, according to the witness' testimony. Whether that was actually the fact, is something else.

Mr. Haslett: I think the witness' testimony speaks for itself, Mr. Examiner.

Trial Examiner Purcell: Yes, I was just trying to refresh my memory on it.

By Mr. McBride:

Q. I think you testified, also, Mr. Timberlake, that your company advertised Morton's products. Was there a special advertising, or was it just in the general course of your business?

A. Through bulletins to our salesmen, is all.

1754 Q. In the same manner in which you put out bulletins on any other sort of commodity?

A. Yes, sir.

Q. With no special allowance or rebate paid in connection with that?

A. No, sir.

Q. You testified with respect to the circumstances under which you first began receiving a quantity discount. I think you stated that you recalled that you had some participation in it, but you don't recall the time or the circumstance, is that right?

A. No, sir.

Q. You referred to a group of salt producers. Were you approached by a group of salt producers or did you

approach a group of salt producers in connection with these quantity discounts?

A. No.

Q. In other words, you got the quantity discount by negotiations that went out from each of the individual processors to pay it, is that right?

A. Yes, sir.

Q. Based on your total purchases as to whether or not you would be entitled to receive the quantity discount?

A. Yes, sir.

Q. No group of producers that you know of put
1755 that into effect as a group?

A. No, sir.

Q. Of your total commodities in the Columbia house, does salt constitute more than about half of one per cent of the total commodities handled by your Columbia house?

A. I really do not know. I don't think it does.

Q. It would be a very small percentage, at any event?

A. Yes.

Q. Would that be true of the dollar volume of salt as contrasted to your total dollar volume, a very small percentage?

A. Yes.

Q. That would probably be true, also, of the other Thomas & Howard companies, is that correct?

A. Yes, sir.

Mr. McBride: I think that is all, Mr. Timberlake.

Redirect Examination by Mr. Haslett.

Q. Mr. Timberlake, I have just a few questions here.

Trial Examiner Purcell: Before you proceed, Mr. Haslett, would it be acceptable to both counsel to have Mr. Haslett's remarks about the witness' testimony stricken from the record?

Mr. Haslett: No, I think it should be in there, because I am going to clear it up right now.

1756 Trial Examiner Purcell: Very well.

By Mr. Haslett:

Q. Mr. Timberlake, how do you know who holds the controlling stock of the Thomas & Howard Company's corporation at Chester?

A. Well, I testified to the best of my ability.

Q. I mean, do you have actual knowledge of who owns

the controlling stock of that company? Have you seen the stock books?

A. Yes.

Q. Do you keep the stock books yourself?

A. No, sir.

Q. Do you know who owns the controlling shares of the Chester corporation?

A. Yes.

Q. Who is it?

A. I can name the owners, if you like.

Q. I mean, each individual owner, and how many shares they own.

A. Yes, sir.

Q. Who are they, sir?

A. Mrs. J. W. Thomas.

Q. How many shares does she own?

A. 124.

Q. 124?

1757 A. Yes, sir.

Q. How much does she own in the Columbia corporation of the Thomas & Howard Company?

A. About 1,000 shares.

Q. 1,000?

A. Or 1,500, something like that.

Q. What is the outstanding stock of the Chester corporation?

A. $50,000.

Q. $50,000?

A. Yes, sir.

Q. 500 shares?

A. Yes, 500 shares.

Q. And she owns 124 shares?

A. 124 shares.

Q. Of the 500 shares?

A. Yes, sir.

Q. What is the par value per share, do you know, sir?

A. $100.

Q. And what is the outstanding stock of the Columbia corporation?

A. 1960 shares.

Q. And how many does she own in that organization?

A. More than 1,000.

Q. More than 1,000?

A. Yes, sir.

1758 Q. And how many do you own in the Chester organization?
A. I own 20 shares.
Q. Twenty shares?
A. Yes.
Q. Of the 500?
A. Yes, sir.
Q. How many shares does Mr. Boyce own?
A. One.
Q. One share?
A. Yes.
Q. How many shares does Mr. Boyce own in the Columbia corporation?
A. Ten, I believe it is, I am not positive.
Q. How many do you own in the Columbia corporation?
A. 465.
Q. And I believe you testified there are 1,000 outstanding shares in the Columbia corporation?
A. 1960.
Q. And you own how many, sir?
A. 465.
Q. And do you have any stock ownership in the Spartanburg corporation of Thomas & Howard?
A. Yes.
Q. How many shares do you own there?
A. Seven shares.
1759 Q. And how many does Mr. Boyce own?
A. I think he owns a small amount, I don't recall.
Q. Less than seven?
A. Yes. Mrs. Thomas owns a considerable amount.
Q. How much does Mrs. Thomas own?
A. About 52 per cent, I think.
Q. Is that Mrs. J. W. Thomas?
A. Yes.
Q. Is Mrs. J. W. Thomas one of the original incorporators of the Columbia corporation?
A. She is the wife of the original incorporator.
Q. She inherited the stock?
A. Yes, sir.
Q. Her husband has now passed on?
A. Yes, sir. Pardon me. I don't know whether you want this on the record or not, but Mr. Howard owns 125 shares at Chester.
Q. He does?

A. Yes, sir.
Q. Does he own any at Columbia?
A. Yes, sir.
Q. How many does he own in Columbia?
A. I think it is 405.
Q. And how many does Mr. Howard own in Spartanburg?
A. None.
1760 Q. How many does Mr. Howard own in Sumter?
A. None.
Q. How much stock does Mr. Howard own in Durham?
A. None.
Q. And how much in Charlotte?
A. None.
Q. And how much does Mr. J. E. Timberlake, your good self, own in Sumter?
A. I would have to figure it. It is 38 per cent of it.
Q. You own 38 per cent of the outstanding stock?
A. Yes, sir.
Q. I think that will be satisfactory. How about Durham? How much do you have in the Durham corporation?
A. None.
Q. In Charlotte?
A. None.
Q. Now, how about in Hickory?
A. None.
Q. And does Mr. Boyce own any in Spartanburg?
A. I think so, a small amount, I don't know what.
Q. And how about Sumter?
A. Yes, he owns—or rather, his daughter—
Q. I am talking about Mr. Boyce, not his daughter.
A. I don't know how much he owns. They own 52 per cent of it, Mr. Boyce and his daughter together, I
1761 know what he owns.
Q. How about in Durham?
A. I don't know how much Mr. Boyce owns in Durham.
Q. Does he own any in Durham?
A. I think so.
Q. You don't know as a fact?
A. I stated that in my previous testimony.
Q. How about Charlotte?
A. Yes.
Q. He owns some in Charlotte?
A. Yes.
Q. Is it a large amount?

A. I don't know how much.

Q. It might be a small amount, or it might be large or small?

A. It could be either.

Q. Now, the Greenville corporation, who owns the controlling stock in that, sir?

A. Mrs. Thomas, I think.

Q. Do you own any in it?

A. No, sir.

Q. Does Mr. Boyce own any?

A. I think so.

Q. A small amount?

A. I don't know.

1762 Q. Who is Mr. C. C. Thomas?

A. He was the late president of our company, who passed on in 1931.

Q. This Christianburg Canning Company that Mr. McBride spoke about, which is up in the sovereign state of Virginia, what does that can?

A. Well, it does very little canning. It was an original cannery, but it developed into a whole grocery company.

Q. Oh, I see. It does very little canning now?

A. There is a long story attached to the canning end of it.

Q. Does it pack any vegetables at all, sir?

A. They contract with the farmers to do their packing for them. They furnish the farmers with the equipment to pack.

Q. I see. You are vice-president of that corporation, aren't you, sir?

A. Yes, sir.

Q. And does it use salt in the pack?

A. Well, it uses salt in the wholesale grocery business.

Q. It doesn't in the packing of its products?

A. They don't actually do their own packing, they have it done by the farmers.

Q. I see, but they sell salt to the wholesale—they sell salt at wholesale to the various retailer customers?

A. They are in the wholesale grocery business, is that they are in principally at Pulaski, Virginia.

1763 Q. How much stock do you own in that corporation, sir?

A. I think it is 38½ shares, at $100 a share.

Q. That is not a controlling interest, is it, sir?

A. No, sir.

Q. All Thomas & Howard corporations that you have testified to here have competitors, haven't they, sir?

A. Yes.

Q. In every area where they operate they have competitors selling groceries and allied products to the retailers in competition with the Thomas & Howard corporation?

A. Yes, sir.

Q. Now, you testified to a question propounded to you by Mr. McBride that the effect of the various corporations was to act as branches instead of separate units in their purchases, is that correct, sir?

A. I didn't intend to testify to that.

Q. What did you mean to testify as to that?

A. I didn't get the question as put by Mr. McBride.

Q. Why do you have the separate corporations?

A. In order that the manager of that particular corporation can participate in the profits of his own house.

Q. Of his own house?

A. That is right.

Q. And the corporations do their own purchasing, and set their own prices?

1764 A. Yes, sir.

Q. Does the Columbia office have anything to do with the setting of prices of Morton's round package salt in any of the corporations operating under the trade name of Thomas & Howard, other than the two branches which it operates from the Columbia office?

A. The three branches.

Q. The three branches?

A. None.

Q. It has nothing to do with it at all?

A. No, sir.

Q. It doesn't set the prices in Charlotte, does it?

A. No, sir.

Q. Now, they each operate as separate units having nothing to do with each other, is that correct?

A. They do operate as separate units.

Q. And the only relationship is some stock ownership between Mrs. Thomas, having some interest in all of the organizations operating under Thomas & Howard?

Mr. McBride: I object to that question. The relationship speaks for itself on the record, and counsel has summarized it far more brief than the record discloses.

Trial Examiner Purcell: I think the question is good, Mr. McBride.

Mr. McBride: If the Examiner please, we are show-
1765 ing officership, directorship and stock ownership, and I object to counsel framing a question in that manner, which isn't even close to consistent with the facts as brought out.

Mr. Haslett: I think this witness can take care of himself all right, sir.

Trial Examiner Purcell: The objection is overruled.

Mr. McBride: Exception.

Trial Examiner Purcell: Yes.

Read the question back to the witness, Mr. Reporter, please.

(The question referred to was read by the reporter.)

The Witness: I would say no.

By Mr. Haslett:

Q. Well, what other relationship would there be?

A. A very friendly relation.

Q. Based on a personal relationship?

A. Yes.

Q. That is, other than the personal relationship, the answer would be "yes"?

A. Yes.

Q. When the Thomas & Howard Company here in Columbia, South Carolina, receives a 5-cent allowance by the Morton Salt Company on Kleer salt and the table salt in the form of a credit memorandum, as represented by Com-
mission's exhibit No. 138-B and Commission's exhibit
1766 137-C, how is that credited to the various corporations operating under the name of Thomas & Howard that have made the purchases?

Mr. McBride: If the Examiner please, we have been through that two or three times. I don't know why the witness should be called upon to re-explain the third time as to how that distribution is made. I object to the question as such.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: I will withdraw my objection.

Trial Examiner Purcell: The objection is withdrawn. Read the question back to the witness, unless you have it in mind, Mr. Timberlake. Do you have it in mind, sir?

The Witness: Yes, I have it in mind. It is deducted by the house receiving the shipment, and credit memorandum, from the invoice when paid.

By Mr. Haslett:

Q. Well, then, Mr. Timberlake, if the Charlotte house of Thomas & Howard should purchase 10 cases of Triangle salt, would the credit memorandum come to the Columbia house, or go direct to the Charlotte house?

A. To the Charlotte house.

Q. And the bill would be paid from the Charlotte house?

A. Yes.

Q. Would that be true as to all commodities of salt
1767 purchased from the Morton Salt Company, where they are purchased individually by the houses, bills are paid by such houses making such purchases?

A. Provided they are not a branch house, yes.

Q. Provided they are not a branch house?

A. Yes.

Q. Then, the only activity that is engaged in by the Columbia branch is to receive from the Morton Salt Company the discount upon the round package salt amounting to 10-cents per case and distributing such discount through such houses that may have purchased in that quarter, is that correct, sir?

A. Yes, sir.

Q. The great majority of the requirements for the various houses operating under the name of Thomas & Howard are placed through their own purchasing offices and the bills paid through their own offices, principal offices?

A. Yes.

Q. It is only a rare occasion when they make purchases through the Columbia office?

A. Very rare.

Q. Very rare?

A. Yes.

Q. In fact, none of the salt is purchased through the Columbia office at all, is it, sir?

A. No, sir.

1768 Mr. Haslett: I think that is all.

Recross Examination by Mr. McBride.

Q. Mr. Timberlake, Mr. E. E. Boyce is a son-in-law of Mr. Thomas, is he not?

A. Yes.

Q. I think you testified, also, that if somebody were offering Morton's blue package salt for $1.65 a case, while you were offering yours at $1.70 a case, that it might affect your business to some degree?

A. Yes.

Q. Do you know anybody selling it below $1.70 per case in Columbia?

A. No, sir.

Q. Would that also be true with respect to your three branch houses? Do you know of any competitor who is selling it for less than $1.70?

A. No, sir, I do not.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Do you know the price at which the Charlotte, North Carolina house of Thomas & Howard charge for Morton's round package salt per case?

A. I do not.

1769 Q. Do you know the price of any of the houses, other than your own?

A. No, sir.

Mr. Haslett: I think that is all.

Mr. McBride: I have no further questions.

Mr. Haslett: That is all, Mr. Timberlake, and thank you very much for coming.

(Witness excused.)

1770 Mr. Haslett: Mr. Woodward, come around and take the stand, please.

B. P. WOODWARD was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Woodward?
A. B. P. Woodward.
Q. And do you reside in Columbia, South Carolina?
A. Yes, sir.
Q. And in what business are you engaged, sir?
A. Wholesale grocery business.
Q. And with what company are you connected?
A. With the C. D. Kenny Company.
Q. And where is the C. D. Kenny Company located?
A. The branch in Columbia, or our main office in Baltimore? Which do you have reference to?
Q. Well, the branch in Columbia first.
1771 A. 711 Gervias Street.
Q. And you say that your main office is located in Baltimore, Maryland?
A. Baltimore.
Q. And the C. D. Kenny Company located on Gervias Street is a branch of the C. D. Kenny Company of Baltimore, Maryland?
A. Yes.
Q. What position do you hold with the company, sir?
A. Manager.
Q. And how long have you been manager?
A. In Columbia, about a year.
Q. One year?
A. Yes.
Q. And how long have you been with C. D. Kenny Company?
A. Nine years.
Q. And prior to the time that you came to Columbia, where were you situated?
A. Savannah, Georgia.
Q. And what position did you hold with C. D. Kenny Company there?
A. Manager.
Q. What is the C. D. Kenny Company?

A. What is the C. D. Kenny Company?
Q. Yes.
A. The business of carrying on a trade of whole-
1772 sale grocery business.
Q. Selling groceries and allied products to the retailers?
A. Yes, sir.
Q. And what are your duties as manager of the branch here in Columbia, South Carolina?
A. My duties are all managerial duties, such as sales manager, promoting sales, office manager in charge of all office operations; in other words, any other details.
Q. You run the whole branch here?
A. Yes, that is correct.
Q. And do you have any salesmen under you?
A. Yes.
Q. How many?
A. Three.
Q. And what are their duties?
A. To solicit orders for the merchandise that we carry.
Q. From the various retailers?
A. Yes, sir.
Q. And what territory is covered by the C. D. Kenny Company branch here in Columbia?
A. We cover a radius, I would say, of 50 miles.
Q. Fifty miles?
A. Yes, sir.
Q. And does your company in the branch here in Columbia do any purchasing of its requirements?
1773 A. Yes.
Q. Does your company have any competitors?
A. Yes.
Q. Would you name some of the competitors that it has in the Columbia area?
A. We have the Thomas & Howard Company of Columbia, Camden, and Newberry. We also have the Merchant's Wholesale Grocery, Hartley Grocery Company and J. K. Livingston at Orangeburg. We have the Grocery Supply Company in Columbia, and others that I can't recall right now.
Q. You have competitors in every area that you operate?
A. Yes, sir.
Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. What type of salt does your company purchase from the Morton Salt Company in its Columbia branch?

A. We purchase from the Morton Salt Company the round package plain and iodized. We purchase the flat package under the label of White Crystal, which is a rock mine salt, a 5-cent salt. We also handle the table salt in the four and ten pound packages, and also our bulk rock mine salt.

Q. I see, sir.

A. And block salt.

1774 Q. Do you know the price that your company pays for the round package blue label salt, both free running and iodized, from the Morton Salt Company?

A. Yes, sir.

Q. What is that price?

A. $1.50.

Q. Per case?

A. Yes.

Q. And what is the price of the Kleer salt, table salt, if you know?

A. I think the last list price was 87-cents.

Q. 87-cents per case?

A. Yes, sir.

Q. What is the resale price charged by your company to its retailer customers?

A. On what particular package?

Q. On the blue package salt.

A. Well, our retail price, I would say it would be $1.70.

Q. $1.70?

A. Yes, sir, although we have made sales quite frequently at $1.75.

Q. Why do you sell it at two different prices?

A. Our list price to the salesmen is $1.75. Our salesmen have the authority to meet any competitive situation within reason on any item that we carry.

1775 Q. How does your company place its orders with the Morton Salt Company for its requirements of salt?

A. You are speaking of how we place our orders?

Q. Yes, from the C. D. Kenny branch here in Columbia.

A. We place them with the broker on some occasions. On others, through the Morton representative, Mr. McAllister.

Q. I see, both the broker and the representative call upon you?

A. Yes, sir.

Q. And solicit orders from your company?

A. Yes, sir.

Q. As a result of which, commodities are shipped to you by the Morton Salt Company?

A. Yes.

Q. Do you purchase on a carload basis?

A. Yes.

Q. And do you receive the carload price?

A. Yes.

Q. Do you ever purchase in pool cars?

A. Yes.

Q. Do you receive the same price in pool cars?

A. Yes, sir.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company?

A. We receive in the form of a credit memorandum 1776 to the branch at Columbia here, on each invoice, accompanying each voucher, I should say, on all table salt, such as the 5-cent salt and the 15/4's and 6/10's, that is the table salt.

Q. That is 15 four pound packages?

A. Yes, sir.

Q. Fifteen our pound packages to the case?

A. Yes.

Q. And six ten pound packages to the case?

A. Yes.

Q. How much of a discount do you receive on those purchases?

A. We receive 5-cents on the 36/1½ package, which is the 5-cent White Crystal, and I don't recall, there is a two or three-cent discount on the other.

Q. It would vary as to the different commodities?

A. As to the size, yes.

Q. Does your company receive any discounts on the round package blue label free running and iodized salt purchased from the Morton Salt Company?

A. Yes, sir.

Q. How much of a discount does it receive?

A. In actual figures, I couldn't say. I have been told that it was 10-cents a case, and we receive from the home office in the form of a credit memorandum from the office, stating that they will credit our account from the Morton Salt Company with a certain amount.

1777 Q. And would that amount be equal to 10-cents a case?

A. I have never checked it, but I was under that impression.

Q. What do you do with that credit memorandum when you get it?

A. Put it in the filing cabinet.

Q. Does it go to any particular account?

A. Not so far as we are concerned in the branch here.

Q. Does it show at the end of the year that the branch has made so much more money due to this credit memorandum attached?

A. Well, our statements come from the home office, in the form of—you are speaking of outside income, I guess?

Q. Yes.

A. We have a form showing outside income, and that is listed there on the credit side.

Q. On the credit side?

A. Yes, of our particular forms that we have.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 140.

(The document referred to was marked "Commis-
1778 sion's Exhibit 140" for identification.)

By Mr. Haslett:

Q. Mr. Woodward, I hand you what has been marked for identification as Commission's Exhibit 140, and ask you to state what that is, if you know, sir?

A. It is a credit memorandum on which we received quantity discounts.

Q. Is it a credit memorandum from the Morton Salt Company?

A. Yes, sir.

Q. Has it a number, sir?

A. Yes.

Q. Will you state that number?
A. No. 71867.
Q. Has it a date?
A. Yes, January 2, 1942.
Mr. Haslett: I offer the document into evidence, Mr. Examiner.
Mr. McBride: No objection.
Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 140.
(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 140" was received in evidence.)

By Mr. Haslett:

1779 Q. Mr. Woodward, I hand you now Commission's Exhibit No. 140, received in evidence, and ask you to state whether or not that document represents a typical credit memorandum passing between the Morton Salt Company and the C. D. Kenny Company of Baltimore, Maryland, for the commodities shown thereon?
A. It does.
Q. Now, when the C. D. Kenny Company receives a credit memorandum of the type that is represented by Commission's Exhibit No. 140, is that deducted from your books or from the books of the main office in Baltimore?
A. When the credit memorandum comes through on this form, it is deducted from our books, as we OK invoices for payment and send them on into Baltimore.
Q. I see, and such amount as may be represented thereon would be deducted from the amount that you would OK for payment to the Morton Salt Company?
A. That is correct.
Mr. Haslett: Mr. Reporter, will you please mark this document for identification as Commission's exhibit No. 141?
(The document referred to was marked "Commission's Exhibit 141" for identification.)

By Mr. Haslett:

Q. Mr. Woodward, handing you Commission's Ex-
1780 hibit No. 141 for identification, would you state what it is, if you know?
A. An invoice from the Morton Salt Company to the

C. D. Kenny Company, Columbia, South Carolina, for salt.

Q. Has it a number, sir?

A. It is numbered 13027.

Q. Has it a date?

A. April 16, 1942.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked Commission's Exhibit No. 141.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 141" was received in evidence.)

By Mr. Haslett:

Q. Mr. Woodward, on the purchases made by the C. D. Kenny Company of Columbia, South Carolina, as represented by Commission's exhibit 141, which shows a discount, would a credit memorandum be received in addition to that, or would the discount shown thereon take care of any credit due the C. D. Kenny Company upon such purchases?

A. This is the only invoice. There is no credit memorandum attached to any invoice of this kind.

Q. But it is shown on the face of the invoice, the discount?

1781 A. I don't quite understand that.

Q. When the discount is shown on the face of the invoice, the credit memorandum is not given by the Morton Salt Company to your company, is that correct, sir, with reference to this particular invoice I hold in my hand?

A. That is true.

Mr. Haslett: Mr. Reporter, will you mark these two documents as Commission's exhibits 142-A and B?

(The documents referred to were marked "Commission's Exhibit 142-A and 142-B" for identification.)

By Mr. Haslett:

Q. Mr. Woodward, I hand you what has been marked for identification as Commission's exhibit No. 142-A, and ask you to state what that is, if you know, sir?

A. That is a typical invoice from the Morton Salt Company for purchases covering salt.

Q. Does it have a number, sir?
A. Yes, 89526.
Q. Does it have a date?
A. January 2, 1942.
Q. And will you turn over and look at the next document, known as Commission's exhibit for identification 142-B, and state what that is, sir?
A. Freight bill of lading covering shipment of salt.
Q. From the Morton Salt Company?
1782 A. Yes.
Q. Has it a number or a date?
A. The date is 1-2-42.
Trial Examiner Purcell: What is the car number?
The Witness: Car number 50019.
Mr. Haslett: I offer the two documents, Mr. Examiner.
Mr. McBride: No objection.
Trial Examiner Purcell: There being no objection the documents described will be received in evidence and designated by the reporter as Commission's Exhibit No. 142-A and B.
(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 142-A and 142-B", and received in evidence.)

By Mr. Haslett:
Q. Mr. Woodward, I hand you Commission's exhibit 142-A, which is now received in evidence, and ask you to state whether or not C. D. Kenny Company received any additional discounts other than those shown on Commissions' Exhibit 142-A?
A. On this particular invoice we received in the form of a credit memorandum on 200 cases 36/one pound eight ounce salt, 5-cents per case; 25 cases of 6/10's, and 25 cases of 15/4's, some of which I am not quite familiar with.
Q. You mean, some of the discounts you are not
1783 quite familiar with?
A. Yes, I don't have them in mind at the present time.
Q. Are any additional discounts on other commodities represented thereon?
A. None whatsoever.
Q. Sir?
A. None whatsoever.
Q. How about the free running and iodized salt?

A. We do not receive a credit memorandum from them for that.

Q. I see, you receive your discounts through your main office on that?

A. Yes.

Mr. Haslett: Mr. Examiner, I have one more paper that should have been attached to Commission's Exhibit 142-A and B.

Trial Examiner Purcell: Let the record show, Mr. Reporter, that to Exhibit 142-A and B shall be added "C", making the total exhibit read 142-A, B, and C. You will now submit Commission's exhibit 142-C for identification to the witness.

(Thereupon, the document referred to was marked "Commission's Exhibit 142-C" for identification.)

By Mr. Haslett:

Q. I hand you now what has been marked for
1784 identification as Commission's exhibit 142-C and ask you to state what this is, if you know, sir?

A. This is a duplicate of credit memorandum from the Morton Salt Company, stating competitive adjustment invoice No. 89526, January 2, 1942.

Q. And is that the same invoice as is now a part of Commission's record as Commission's exhibit 142-A?

A. Yes, sir.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence as portion "C" of Commission's exhibit 142-A and B, and so marked.

(The document referred to, heretofore marked for identification as "COMMISSION'S EXHIBIT 142-C" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you three documents and ask you to mark them for identification as Commission's Exhibit No. 143-A, B, and C.

(The documents referred to were marked "Commission's Exhibit 143-A, 143-B and 143-C" for identification.)

By Mr. Haslett:

Q. Mr. Woodward, I hand you now Commission's
1785 Exhibit for identification 143-A, and ask you to state what that is, if you know, sir?

A. An invoice from the Morton Salt Company covering a purchase of salt to C. D. Kenny Company, Columbia, South Carolina.

Q. Has it an invoice number?

A. Yes, invoice No. 627.

Q. And has it a date?

A. January 30, 1942.

Q. Now, I refer you to what has been marked for identification as Commission's exhibit No. 143-B, and ask you to state what that is?

A. A bill of lading on a car of salt purchased from the Morton Salt Company by C. D. Kenny Company, Columbia, South Carolina.

Q. And has it a date?

A. January 30, 1942.

Q. And I refer you now to what has been marked for identification as Commission's Exhibit 143-C, and ask you to state what that is, sir?

A. That is a duplicate of a credit memorandum covering invoice of January 30, 1942, credit memo No. 72454.

Q. Were the penciled notations appearing thereon put on by someone in the employ of the C. D. Kenny Company?

A. Yes.

1786 Q. In the regular course of C. D. Kenny's business?

A. Yes, sir.

Mr. Haslett: I offer the three documents, Mr. Examiner, into evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked for identification "Commission's Exhibit 143-A, B, and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 143-A, 143-B, and 143-C" were received in evidence.)

By Mr. Haslett:

Q. Mr. Woodward, do you know approximately the number of cases that C. D. Kenny Company's branch here in Columbia purchases per year from the Morton Salt Company?

A. What type of cases are you speaking of?

Q. The free running and iodized salt.

A. The round package salt?

Q. Yes.

A. Only being here since April of last year, I can only give you an approximate amount. I would say between 400 and 450 cases of round package.

Q. For the year?

A. Yes.

Q. And does your company's branch at Columbia,
1787 South Carolina, purchase $50,000 worth of salt from the Morton Salt Company per year?

A. No, sir.

Q. Does it purchase from all sources of supply or all processors of salt $50,000 worth of salt during a 12 consecutive months' period?

A. No, sir.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. I think the price we pay for any commodity is an important factor in our business.

Q. Among which would be salt?

A. That is right.

Q. And does your company give any consideration to the price at which its competitors are selling salt to its customers in determining the price which it is going to put on its salt for resale to the retailer customers?

A. We determine our prices based on a profit above our cost. If the competition doesn't allow us to make this profit, we will make no sale.

Q. If a competitor of yours was offering salt at $1.60 per case to your customers, while at the same time you were charging $1.70 per case, would that in any way affect your business?

A. Yes, sir.

1788 Q. What effect would it have on your business if one of your competitors was purchasing salt at $1.35 a case, while at the same time you were paying $1.40 a case for the round package blue label, free running and iodized salt?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: You asked what effect it would have on our business?

By Mr. Haslett:

Q. Yes.

A. It would be according to how he would base his price. If he would base his price on $1.35, his selling price, and he was under our price, I am sure it would affect our business.

Q. Is the price usually based upon the cost?

A. In our case, yes.

Q. How does your company determine the price at which it is going to sell Morton's round package salt to its customers from its branch here in Columbia?

A. I have full authority to establish prices for the retail trade in this branch, and we establish a profit. What profit there might be would depend entirely on the commodity and the competitive situation that exists in the territory. In the case of Morton's round package salt,
1789 we have been able to get $1.70 in the city, in the territory here.

Q. $1.70 per case?

A. That is right.

Q. And how is that figure arrived at, sir?

A. How is it arrived at?

Q. Yes.

A. The difference between our cost and a fair profit.

Q. And if your cost was increased, your margin of profit would be decreased if you kept it at the same figure?

A. Absolutely, yes.

Q. I believe you stated that the White Crystal table salt was now being purchased at 87-cents per case?

A. Yes, the list is 92 less 5 on the invoice.

Q. And what is your resale price on that, sir?

A. 95-cents.

Q. What effect would it have upon your business if one of your competitors offered to sell that particular type of salt to your customers at 90-cents per case, would that in any way affect your business?

A. Yes, I am sure we would lose sales if we would maintain a price of 95-cents and theirs was 90-cents.

Q. That would be true to any line of salt?

A. Yes, any line of any merchandise.

Q. When your company purchases salt from the
1790 Morton Salt Company on a carload basis, it pays the carload price?

A. Yes, we usually pay their list price.

Q. Does it ever make any purchases on less than a carload basis?

A. Yes, sir.

Q. By that, I don't mean pool cars. Do you purchase from the brokers?

A. We participate in pool cars only. We don't purchase from the broker.

Q. When you purchase on a pool car basis, you get the same price you get on a full car, is that correct?

A. Yes.

Q. Has Morton Salt Company in the past been billing your company at $1.60 for its round package free running and iodized salt?

A. The past few invoices that I have noticed have been $1.60 on the invoice, less 10-cents.

Q. Showing the unit discount of 10-cents?

A. Yes, sir.

Q. That, of course, has nothing to do with the additional discount that comes to you through your company in the form of a credit memorandum, is that correct, sir?

A. That is correct.

Q. Do you know the reason for that?

A. No, sir.

1791 Q. You say it has happened within the past several months?

A. I only have the records there for this year, and I just noticed those on there. I don't know how the previous invoices were listed.

Q. Do you know of any competitor who has ever sold salt in that round package free running in the Columbia area less than $1.70 at any time that you can recall?

A. I am not in a position to say that there was any occasions.

Q. You don't remember of any occasion?

A. No, sir.

Q. All of your competitors and yourself have been at the same price on the resale of Morton's round package salt to the retailers?

A. Yes, as far as I know.

Q. Have you ever made any sales of Morton's round package salt to your competitors?

A. No, sir, not that I know of.

Q. Was the price of $1.50 for the round package salt in

effect when you became manager of the Columbia branch for C. D. Kenny Company?

A. Yes, I think so.

Q. It has been in effect ever since?

A. Yes, sir.

1792 Q. Was the discount of 10-cents per case in effect when you came here, sir?

A. I wouldn't know. As I stated before, we receive this form of credit memorandum from the home office, a credit memorandum stating we have been credited so much money, and I never followed to determine exactly what they represented, because it didn't figure in my figures in any way.

Q. How long have you been receiving that credit memorandum, since you have been in this office?

A. Yes.

Q. When you were with C. D. Kenny before, did you receive it?

A. I think so, yes.

Q. Do you remember approximately what the credit memorandum would say, how it would read?

A. Why, I would say it reads something like this: "We have placed to your account so many dollars from the Morton Salt Company."

Q. From the Morton Salt Company?

A. Yes.

Q. Does your company do any missionary or promotional work for Morton Salt Company in connection with the resale of its products?

A. No, sir.

Q. Do you publish any price lists?

1793 A. No, sir.

Q. You haven't any other branches of C. D. Kenny Company under your supervision, have you, sir?

A. No, sir.

Q. Just this one branch?

A. Yes, sir.

Q. Where is the nearest branch of the C. D. Kenny Company located?

A. Augusta, Georgia.

Q. Do you encounter competition with that branch?

A. No, sir.

Q. You don't cross competition?

A. No, sir

Hr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. Mr. Woodward, I show you Commission's Exhibit No. 142-C, which I believe you identified as a credit memorandum covering a competitive adjustment. As far as you know, that was a competitive adjustment made available to all buyers in this area on a competitive price situation, was it not?

A. Yes, I am sure that was the reason we received the credit memo.

Q. In other words, that wasn't a special adjustment to C. D. Kenny Company?

1794 A. No, sir.

Q. Do you know of anybody, Mr. Woodward, who is selling any of the square packages of White Crystal salt in Columbia for less than 95-cents a case?

A. No, sir.

Q. I believe you testified that so far as you knew nobody was selling the blue package round can for less than $1.70 in Columbia?

A. In my own mind, I would say I don't know of any case where they do.

Q. I understand from your testimony that when you determine the $1.70 price on the blue can, that you use the list price of $1.50 a case as a basis for your pricing, is that correct?

A. Yes, sir.

Mr. McBride: I think that is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Woodward, you testified that the memorandum from the Morton Salt Company known as a credit memorandum, and more particularly known as Commission's exhibit 142-C, was a credit given the C. D. Kenny Company at Columbia, South Carolina on a competitive adjustment?

A. Yes.

Q. What did you mean by "a competitive adjustment"?

Mr. McBride: If the Examiner please, I object to
1795 that. He is testifying from an instrument which has those words on it. I don't believe this witness can testify what is meant by it. He is simply using those words for identification of that exhibit.

Trial Examiner Purcell: He didn't put the words on the exhibit, did he?

Mr. McBride: That is correct.

Mr. Haslett: But Mr. McBride asked him if the adjustment made on Commission's exhibit 142 was a competitive adjustment given to all, and he said yes, I want to know what he means by competitive adjustment.

Trial Examiner Purcell: Now, let's get off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

I think you let down the bars, Mr. McBride. You may answer.

Mr. Haslett: Read the question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: As I recall, Mr. McBride's question was to me, could it have been a general—

Trial Examiner Purcell: (Interrupting.) That is not the question to you, sir. Read the question back, Mr. Reporter.

(The question referred to was re-read by the re-
1796 porter.)

The Witness: My explanation would be an adjustment made to put us in a position to be competitive with conditions in our territory.

By Mr. Haslett:

Q. You mean, competitive with your competitors, or to put you in a position where your price would be the same as the price quoted by another processor of salt?

A. Where our price would be the same as prices quoted by other processors of salt.

Q. By other processors of salt?

A. Yes.

Q. And he asked you whether this was made available to all of the customers on the Morton Salt Company in this area. Do you know whether it was made available to all customers, of your own knowledge?

A. I probably misunderstood the question. I thought he said could it have been made available.

Mr. McBride: Mr. Examiner, I object to counsel's question. I didn't ask this witness that question. Obviously, this witness can't answer that, and I object to counsel's reframing my question.

Trial Examiner Purcell: I don't remember the exact

phraseology of your question, but it very closely approached that. Let's go back and review the record.

1797 (The record was read by the reporter.)

Trial Examiner Purcell: Objection overruled.

By Mr. Haslett:

Q. Do you know of your own knowledge whether Morton Salt Company gave credit to its various customers for the adjustment as represented by Commission's exhibit No. 142-A?

A. No.

Q. I hand you Commission's exhibit 143-C, and ask you to state why an additional 2-cents per case was granted on the 500 cases of salt as represented thereon?

Mr. McBride: Excuse me, may I have that question again?

(The question referred to was read by the reporter.)

Mr. McBride: Before the witness answers, may I examine the exhibit?

Mr. Haslett: That is the penciled markings on there.

Mr. McBride: I object to the question. It doesn't show that there is any additional 2-cents granted. It is simply identified as some figure put on by the witness in the course of his business.

Trial Examiner Purcell: I will hear from you on the objection, if you please, Mr. Haslett.

Mr. Haslett: Well, the only reason I asked the question was trying to clear up the penciled notations

1798 that appear on Commission's exhibit 143-C. As it appears, 2-cents per case is granted on 500 cases of salt. I wanted to know the reason for that.

Trial Examiner Purcell: Let me examine the exhibit, please. I haven't seen it.

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: I sustain the objection, Mr. Haslett.

By Mr. Haslett:

Q. Mr. Woodward, I hand you Commission's exhibit 143-C, and ask you to explain the notations that appear thereon, "2-cents a case on 500 cases of salt, $10."

A. As I recall, this 2-cents a case was not allowed by our accounts payable office. The notation should have been stricken from the invoice that I have penciled thereon. At the time it was put on here, it was a misunderstanding in

price. It should have been stricken from the invoice, because it was not allowed by our accounts payable department.

Q. And it would show a reduction in price?

A. Yes.

Q. Of 2-cents per case on 500 cases?

A. Should it have been allowed.

Q. Should it have been allowed?

A. Yes.

Trial Examiner Purcell: Let's go off the record.

1799 (A discussion was had off the record.)

Trial Examiner Purcell: Back on the record.

By Mr. Haslett:

Q. Mr. Woodward, when you said "invoice," stricken from the invoice, you meant stricken from the credit memorandum, didn't you?

A. Yes, that is correct.

Q. That is the penciled notation that appears thereon, "2-cents a case on 500 cases of salt, $10," should not appear on that exhibit, is that correct?

A. That should be erased from the exhibit.

Mr. Haslett: I think that is all, Mr. Woodward.

Mr. McBride: I have nothing further.

Mr. Haslett: Thank you very much for coming, sir.

(Witness excused.)

Mr. Haslett: Mr. Examiner, I would like for the record to show that Commission's Exhibits numbers 140, 141, 142-A, B, and C, and 143-A, B, and C, are to be photostated by the Commission and the photostated copies returned to C. D. Kenny Company's branch at Columbia, South Carolina.

Trial Examiner Purcell: Let the record so show.

Mr. Haslett: I will call Mr. Hartley next.

WILBUR HARTLEY was thereupon called as a witness for the Commission, having been first duly

1800 sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record?

A. Wilbur Hartley.

Q. And do you reside in Columbia, South Carolina?

A. Yes, sir.

Q. And in what business are you engaged, sir?
A. Wholesale grocery business.
Q. And with what company are you connected?
A. Hartley Grocery Company.
Q. And where is the Hartley Grocery Company located, sir?
A. 912 Gervais Street, Columbia.
Q. And does the Hartley Grocery Company have any branches?
A. A branch at Greenwood, South Carolina.
Q. Is that the only branch?
A. Yes, sir.
Q. Is it a corporation, sir?
A. No, we are unincorporated.
Q. Just a firm privately owned, sir?
A. Yes.
Q. And do you have an interest in the firm?
A. I own it.
Q. You own the whole company?
A. Yes, sir.

1801 Q. What territory is covered by the Hartley Grocery Company? Is it within a radius of 50 miles around Columbia?
A. Yes, we cover a radius of 50 miles.
Q. And how about the branch at Greenwood?
A. Well, we cover a radius of approximately 35 miles around Greenwood.
Q. What is the business of the Hartley Grocery Company?
A. Well, we are wholesale grocers, handling a full line of groceries.
Q. Do you sell groceries and allied products to the retailer stores?
A. Yes, sir.
Q. And do you do any retail business at all, sir?
A. No, sir.
Q. You sell only at wholesale?
A. Yes, sir.
Q. Has the Hartley Grocery Company any competitors?
A. Yes, sir.
Q. Now, name some of the competitors in the Columbia area.
A. Thomas & Howard, Merchant's Wholesale, C. D. Kenny.

Q. Is the Rawl Distributing Company one of your competitors?

A. Yes, sir.

Q. Have you named some of your competitors out of Greenwood?

A. Rose-Phillips Company, located in Greenwood.

Q. Is the Spratt Grocery Company a competitor?

1802 A. Yes, at Laurens, South Carolina.

Q. How about Thomas & Howard out of Greenville?

A. Yes.

Q. And the Cannon Grocery Company?

A. Out of Greenville?

Q. Yes.

A. Yes, sir.

Q. How about the Turner Grocery Company?

A. Well, we lap over in some territories.

Q. You have competitors in each one of these territories where you operate?

A. Yes, sir.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. Does it make any purchases from the respondent, Morton Salt Company?

A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. We handle Morton's round package.

Q. Is that the blue label salt?

A. Yes.

Q. Both free running and iodized?

A. Yes, both.

Q. Does it handle any other type of salt from the

1803 Morton Salt Company?

A. No, sir.

Q. Just the table salt?

A. Yes, sir.

Q. Is that true as to your branch in Greenwood, also, sir?

A. Yes, sir.

Q. Does the office at Columbia of the Hartley Grocery Company, do the purchasing for the branch at Greenwood?

A. Some of the purchasing.

Q. And some of them are made at the branch itself?

A. Yes, sir.

Q. Do you have a local branch manager there?
A. Yes.
Q. Is he under your jurisdiction?
A. Yes, sir.
Q. And under your supervision, also, sir?
A. Yes, sir.
Q. Does your company purchase salt from any other processor of salt?
A. Yes, sir.
Q. Would you name some of those, please, sir?
A. Carey Salt Company.
Q. And some others, please?
A. None.
Q. Just the Carey?
1804 A. Yes.
Q. You only have two sources of supply, then, the Morton Salt Company and the Carey Salt Company?
A. Yes, sir.
Q. I believe you stated the only type of salt that you purchase from the Morton Salt Company is the round package blue label free running and iodized salt?
A. Yes, sir.
Q. Do you know the price at which you pay for that salt, per case?
A. It is being billed at $1.60 less 10-cents a case.
Q. And how long has it been billed at those figures?
A. I don't know exactly. Previous billing was $1.50.
Q. Net, $1.50?
A. Yes.
Q. And now it is $1.60 less 10, which amounts to $1.50?
A. Yes.
Q. Just a change of figures?
A. Yes.
Q. Do you know how long the $1.50 net price has been in effect?
A. No, sir, I don't.
Q. How long have you been purchasing from the Morton Salt Company?
A. Well, for a number of years.
1805 Q. Ten years?
A. I don't think quite that long.
Q. Could you state it approximately, please?
A. Well; I would say the last five years.
Q. The last five years you have been purchasing the round package salt from the Morton Salt Company?

A. Yes.

Q. Has the $1.50 net price been in effect since that time?

A. I think so.

Q. What is the price that your company charges its customers for the round package salt per case?

A. Our price ranges from $1.65 to $1.75.

Q. $1.65 to $1.75?

A. Yes.

Q. What would cause you to sell it at $1.65 a case?

A. Well, to meet competition.

Q. What do you mean by meeting competition, sir?

A. Well, to meet prices named by other wholesale grocers in this territory.

Q. Do you know of any other wholesale grocer that is selling it for $1.65 a case?

A. My salesmen inform me that Thomas & Howard have sold it for $1.65.

Q. And you met that price of $1.65 of Thomas & Howard?

A. Yes.

1806 Q. And you also sell it to other customers at $1.75?

A. Yes.

Q. Does your company receive any discounts or allowances from the Morton Salt Company on its purchases of the round package salt?

A. No, sir.

Q. You don't receive any at all, sir?

A. No, sir.

Q. Approximately how many cases of the round package salt do you purchase per year?

A. Well, I would say approximately 300 cases.

Q. Around 300 cases?

A. Yes.

Q. Is that for both branches?

A. Yes, sir.

Q. Does it do any purchasing from the Morton Salt Company on a carload basis?

A. No.

Q. Do you get it in pool cars with the other competitors?

A. Yes.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Yes, sir.

Q. And is the price at which your competitors sell its salt given consideration in determining the price your
1807 company sells its salt products?

A. I don't understand the question.

Q. Well, if someone was selling salt at $1.65 a case, you would lower your price to meet that if they were selling to your customers at that price, is that true?

A. Yes.

Q. So, it would be a determining factor in arriving at the resale price of your products, would it not, sir?

A. Yes.

Q. What effect would it have upon your business if one of your competitors sold salt to your customers at $1.65 a case, while at the same time you were charging $1.75 a case for it, sir?

A. Well, we would not only lose that salt business, but we would probably lose some other business along with it.

Q. You mean, by not being in line on one particular commodity, that it might affect the general order you are receiving from that customer?

A. Yes, it would.

Q. How does that come about, sir?

A. Well, our customers take it for granted that we would be higher on other commodities if we were higher on one commodity than our competitors.

Q. Do you know of any particular instance where that has happened?

1808 A. Well, no, I don't recall any particular instance right now.

Q. But it would have a determining effect upon your business?

A. Yes, sir.

Q. What effect would it have upon your business if one of your competitors was paying $1.40 a case for salt, while at the same time you were paying $1.50 a case for that round package salt?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Well, he would be in a position to sell at a lower price than we could.

By Mr. Haslett:

Q. Is the price which you pay for your commodity given consideration in determining the resale price of the commodity?

A. Yes.

Q. If you were paying $1.40 for it, that would have something to do with the resale price of the commodity?

A. Yes, sir.

Q. Such as round package salt?

A. Yes.

Q. I believe you stated you purchase approximately 300 cases of that round package salt per year from the

1809 Morton Salt Company?

A. Well, it could possibly be more than that, but that would be approximately the quantity.

Q. How do you place your orders for your requirements of the round package salt?

A. Well, we usually place the order with Mr. McAllister.

Q. And who is Mr. McAllister?

A. He is the representative of the Morton Salt Company.

Q. Does he call upon you and solicit orders from you for your requirements of both the Greenwood branch and the Columbia branch of the Hartley Grocery Company?

A. Yes, sir.

Q. As a result of which commodities are shipped to you by the Morton Salt Company?

A. Yes, sir.

Q. In cars?

A. Pool cars.

Q. In pool cars?

A. Yes, sir.

Q. Mr. Hartley, if a competitor of yours offered to sell Morton salt for a limited period of time, say, from one to ten days, at a price of $1.60 a case to your customers, while at the same time you were charging $1.75 a case, would that in any way affect your business?

A. Yes, it would.

1810 Q. The time element wouldn't make any difference?

A. I beg your pardon?

Q. The time element being fro mone to ten days wouldn't make any difference, you would have to meet the price, no matter how long it was in effect, is that correct, sir?

A. Yes, it would affect our business unless we met the price immediately.

Q. And if you met the price, why, your margin of profit would be decreased by the amount that you had to reduce in order to meet the equally low price of a competitor?

A. Yes, sir.

Mr. Haslett: Mr. McBride, is it stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's Exhibit No. 52, except as to the quantity of the product, date, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company, and the Hartley Grocery Company, of Columbia, South Carolina, who is a customer of the respondent, Morton Salt Company, and that said Commission's Exhibit No. 52 is typical of such invoices for the sale of salt of the same type that appears thereon that pass between the respondent herein and its customer, Hartley Grocery Company of Columbia, South Carolina, and that such invoices have in the regular course of the respondent's business passed between the respondent
1811 and its said customer, Hartley Grocery Company, of Columbia, South Carolina, since the respondent began the sale of, and the said customer, Hartley Grocery Company of Columbia, South Carolina, began the purchase of the type of products that appear on Commission's Exhibit No. 52?

Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. Did you know, prior to the time that I told you, Mr. Hartley, that the Morton Salt Company granted and allowed discounts and allowances on purchases of round package salt?

A. Well, yes, I had heard of it.

Q. You had heard of it before the time I told you about it?

A. Yes.

Q. Had you ever spoken to Mr. McAllister about the matter?

A. I think I have, yes.

Q. Did you ever make a request to him that your company be given the same allowance as your competitors were getting?

A. I think so, some time in the past, I don't just recall when.

Q. You did not receive any allowance, did you?

A. No, sir.

Q. And you do not receive any allowance or discount today?

A. No. sir.

Mr. Haslett: I think that is all.

1812 *Cross-Examination by Mr. McBride.*

Q. Mr. Hartley, I believe you stated that your price ranged from $1.65 to $1.75 here in Columbia?

A. Yes, sir.

Q. How long has that price range been in effect, the past several years?

A. No, I don't think quite that long.

Q. How long do you think it has been in effect?

A. Well, more than a year.

Q. Over a year?

A. Yes.

Q. What was your price before then?

A. $1.75.

Q. $1.75?

A. Yes.

Q. Now, what is your price range in Greenville?

A. I don't know just what it is there.

Q. It may be anywhere within that range or above it, you don't recall what it is right now?

A. No, sir, I do not.

Q. Your volume, as I recall your statement, is approximately 300 cases a year, as nearly as you can recall. Has that been your volume for the past five or six years?

A. Well, I couldn't say positively about that.

Q. You don't have any recollection as to how much you purchased prior to 1940, is that right?

1813 A. No, sir, I don't.

Q. I think you testified that you had reports from your salesmen that Thomas & Howard were selling the blue can at $1.65 per case?

A. Yes, sir.

Q. When did you receive those reports?

A. I believe that report came in some time last year.

Q. You don't recall the approximate date?

A. No, sir, I do not.

Q. Where was the price being offered, in what town?

A. Here in Columbia.

Q. To whom was it being offered?

A. I don't recall.

Q. Do you know how long that price offer was being made?

A. I do not.

Q. Do you know whether it had any connection with the quantity being sold or offered to that particular retailer?

A. Our salesmen did not mention the quantity, that the customer had to buy a quantity to get that price.

Q. In other words, if such a price was made, $1.65, by Thomas & Howard, so far as your information goes, it may have been for a quantity purchase from Thomas & Howard, or it may have been only for one or two days' special, is that right?

1814 A. Well, it could have been.

Q. Well, do you know whether it was any other price arrangement than that?

A. No, I do not.

Q. As I understand it, then, you don't know the retailer to whom this price was offered, is that right?

A. I don't recall, no.

Q. Did your salesmen report as to whether or not this particular retailer, whoever he was, purchased his salt from Thomas & Howard?

A. Repeat the question, please.

Mr. McBride: Read the last question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Yes, that was my understanding from the report that I received.

By Mr. McBride:

Q. Do you know how many cases he supposedly purchased from Thomas & Howard?

A. No, I do not.

Q. In any event, you don't recall that you made the sale to that particular customer?

A. No, sir, I don't recall.

Q. Now, were there any other instances like that, that you know of, Mr. Hartley?

A. I don't recall any others.

1815 Q. That is the only one you remember, and that is what you were referring to when you mentioned your $1.65 price to meet competition, is that right?

A. My salesmen have reported that on more than one occasion.

Q. What other occasions besides the one that you have just described?

A. My salesmen have reported the $1.65 price on other occasions.

Q. Well, can you identify these other occasoins for us, Mr. Hartley?

A. I beg your pardon?

Q. Can you identify these other occasions for us?

A. I don't remember the dates.

Q. When they were, or to whom the offers were made, or you don't know anything about it?

A. No, I don't know anything about that, either.

Q. I think you stated, Mr. Hartley, that if somebody offered the blue package at a price less than what you were offering it at, that you might lose that salt business, is that correct, if you didn't meet the price?

A. Yes, I would.

Q. And I think you stated, also, that you might lose some other business?

A. Yes, sir.

1810 Q. Has that ever happened?

A. Well, it could happen without my knowing anything about it. You could lose business without knowing just why it happened.

Q. You don't know of any instance where that has ever happened of your own knowledge, is that correct?

A. Well, I couldn't recall any particular instance.

Q. It is quite customary in the wholesale business, isn't it, Mr. Hartley, for various wholesalers to offer specials as a leader to get more business from the retail trade?

A. Well, I think some wholesalers do that.

Q. They may choose any one of a number of items for their special offers, isn't that correct?

A. Well, yes, sir.

Q. When that happens, do you endeavor to meet the special prices that are offered in those instances when you recognize them as being specials only?

A. Well, sometimes we do, yes.

Q. Sometimes you do, and sometimes you don't, is that correct?

A. Yes.

Q. Now, do you know of anybody who has ever offered Morton's blue package salt as a special sale item in Columbia, speaking now of the wholesale trade only, of course?

A. Well, I wouldn't know whether that was a 1817 special price they had on it or not.

Q. Well, do you know of anybody other than the reference that you made as to the reports that you made on Thomas & Howard, the $1.65 price, do you know of anybody in Columbia who sells below $1.75 a case?

A. I beg your pardon, I didn't understand your question.

(The question referred to was read by the reporter.)

A. No, sir, I don't.

Q. You don't know of any other instances of the blue package being sold for less than $1.70 a case, even on a special sale, is that right?

A. No, sir, I don't.

Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. The last question that Mr. McBride asked you, whether you knew of any instance where the blue package was sold at less than $1.70 a case, the only instance that you know is where you had to meet the price of Thomas & Howard, is that correct, sir?

A. Yes, sir.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: Anything more, Mr. McBride?

Mr. McBride: No further questions.

Mr. Haslett: Thank you very much, Mr. Hartley.

1818 (Witness excused.)

Mr. Haslett: Mr. Examiner, may we have a short recess?

Trial Examiner Purcell: Yes, a five minute recess.

(A short recess was taken.)

Mr. Haslett: I will call Mr. F. E. Robinson.

FRANK ELLIOTT ROBINSON was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Robinson?
A. Frank Elliott Robinson.
Q. Do you reside in Columbia?
A. Yes, sir.
Q. And what business are you engaged in, sir?
A. In the wholesale grocery business.
Q. And with what company are you connected, sir?
A. Merchant's Wholesale Grocery.
Q. Is it a corporation?
A. Yes, sir.
Q. Incorporated under the laws of what state, sir?
A. South Carolina.
1819 Q. What position do you hold with the company?
A. President.
Q. And how long have you been president?
A. Ever since there has been a firm, since 1921.
Q. Since 1921?
A. Yes, sir.
Q. What is the business of the Merchants Wholesale Grocery Company?
A. We distribute food stuffs of all kinds; what is known as the wholesale grocery line, food and allied items.
Q. Do you sell them to the retailer stores?
A. Yes.
Q. You don't do any retail business, do you?
A. No.
Q. Only wholesale?
A. Yes.
Q. Within a radius of what? How far do you sell your products from Columbia?
A. Not over forty or fifty miles, perhaps would be the limit.
Q. It would be within a radius of fifty miles?
A. Yes.
Q. Does your company have any competitors?
A. Quite a few.

Q. Would you name a few of them for us, please?

A. Hartley Grocery, Thomas & Howard, Grocery
1820 Supply Company in Columbia, C. D. Kenny Company; I believe those are the principal competitors we have.

Q. Does the Merchants Wholesale Grocery Company have any branches?

A. No, sir.

Q. It just has the one warehouse?

A. The one warehouse.

Q. Where is it located?

A. 707 Gervais Street.

Q. In the city of Columbia?

A. In Columbia.

Q. And is that the main office of the Merchant's Wholesale Grocery Company?

A. Yes, sir.

Q. And does your company purchase or handle salt?

A. Yes.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes, a few.

Q. Does it make any from any other processors of salt?

A. It does. We have a couple of other accounts.

Q. Would you name them, please, sir?

A. Worcester Salt Company and also Myles Salt Company.

Q. Myles Salt Company?

A. Yes, sir.

Q. What type of salt does your company purchase
1821 from the Morton Salt Company?

A. What they call table salt, the round cartons, both plain and iodized.

Q. The round package blue label salt?

A. Yes, sir.

Q. Free-running and iodized?

A. Yes.

Q. Do you handle any other types of salt from the Morton Salt Company?

A. No, sir.

Q. Do you know approximately the number of cases you purchase during a year's time?

A. I would say 225 or 250; not over 250 per year.

Q. About 250 cases a year?

A. I think that is about right.

Q. Has that been the average figure for the past several years?

A. I would think so, certainly so for the last couple of years.

Q. Do you know the price which your company pays the Morton Salt Company for its round package blue label salt per case?

A. $1.50.

Q. How long has that price been in effect?

A. I don't recall exactly, but I am sure it has been in effect for a couple of years.

1822 Q. Perhaps several years?

A. Yes.

Q. And what is the price which your company charges its customers for the round package salt per case?

A. We charge our customers for it?

Q. That is right, sir?

A. We have a list on it of $1.75, and we let our men meet competition as low as $1.65, which we are compelled to do in some instances, but I never let them go below $1.65.

Q. Why do you meet that competition?

A. Well, we meet competition for, I will say, the psychological effect. If we are out of line on a few items, it is natural to suppose that the customer would think that ultimately we were out of line on a good many other things; perhaps everything.

Q. So if you are out of line on salt it might affect your other business also?

A. We assume that, at least, we don't know it.

Q. I believe you testified that you allow your salesmen to meet competition; that is to lower the price to meet the price of a competitor?

A. As low as $1.65, not below that.

Q. Why don't you go below that?

A. Because we don't feel that we can and possibly stand it.

Q. How long has your company been purchasing
1823 the round package blue label salt from the Morton Salt Company?

A. I don't know exactly, sir, it must be four or five years, though.

Q. The past four or five years?

A. Yes, sir.

Q. Do you purchase it today?
A. Yes, sir.
Q. Has the price of $1.50 been in effect ever since you have been purchasing from the Morton Salt Company, if you know, sir?
A. I don't recall that. I don't recall that far back. The reason I can't answer the question is because I haven't done the buying all the time since we have been handling it.
Q. Who does the buying besides you?
A. Mr. Clark.
Q. And is he under your general supervision?
A. Oh, yes.
Q. You have supervision over the whole business, don't you?
A. Yes, sir.
Q. Do you ever make any purchases of round package salt on a carload basis?
A. No, not recently.
Q. Do you get yours in pool cars with other customers of Morton's?
A. Yes.
1824 Q. Is the price which your company pays for its salt an important factor in its business?
A. What is that again?
Q. Is the price which your company pays for its salt requirements an important factor in its business?
A. Well, it is one of the very staple items, yes, it would be an important factor.
Q. How do you arrive at the figure at which you are going to resell Morton Salt to the retailer customers of the Merchants Wholesale Grocery Company?
A. How do we arrive at what we sell it for?
Q. Yes.
A. Why, a suggested list.
Q. What do you mean by a suggested list?
A. I believe that the factory suggests that list for us, as the selling price to begin with.
Q. Morton Salt Company suggests the resale price?
A. I think that is it.
Q. And how did you get that information, sir? Did it come to you in the form of a bulletin?
A. Not in the form of a bulletin, it probably was told to us by Morton Salt Company's salesmen.

Q. He told you to sell it for $1.75?

A. He suggested it.

Q. And that is your list price for it now?

1825 A. Yes.

Q. And on occasion you do sell it for as low as $1.65 in order to protect your business, and in meeting competition, is that correct, sir?

A. Yes, we sell it as low as $1.65 quite often.

Q. Do you know the name of the competitor that was quoting the $1.65 price that caused your company to lower the price of its round package blue label salt to $1.65?

A. Thomas & Howard was the main ones.

Q. Thomas and Howard is the main one?

A. Yes, sir.

Q. What effect would it have on your business if one of your competitors was purchasing Morton's salt at ten cents a case less than the price that you were paying for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

By Mr. Haslett:

Q. You may answer, sir.

A. Why naturally there is a depressive effect if it is a general thing, or lasted all along.

Q. But do you think he would be in a favorable position?

A. Ultimately it would be very detrimental. I don't imagine I could stand it too long if it was a general practice.

Q. It would have an adverse effect upon your business?

A. Oh, yes.

1826 Q. When you have on occasions lowered your price from $1.75 to $1.65 to meet the competition of Thomas & Howard, your business has been injured as to the difference between what you were selling it at and what you would sell it at?

Mr. McBride: Mr. Examiner, I object to that question.

Trial Examiner Purcell: State the grounds.

Mr. McBride: The use of the word "injure". Counsel has attempted to elicit an answer to the effect that simply because the price is lower, that the witness' business is injured, and again I must hark back to the grounds that I used in support of the profit objection.

Trial Examiner Purcell: Yes, I understand that the two are very closely related. It seems to be almost impossible for counsel for the Commission to formulate a question along this line that is not subjected to your objection. I don't think that Counsel for the Commission has any ulterior motive in putting his question in the form of damage or a reduction in the word "profit", and as to the word profit, I don't think there is anything sacred about the word at all. You have your opportunity to go into that on cross examination, where, upon the other hand, you elect to make a major point of it, and may do so in your defense. I can readily see the object of counsel for the Commission in attempting to elicit the information, to show that
1827 profit was not so great in the one instance, and that as a result of the profit not being so great, the man was necessarily damaged. It may be true that it was only the proverbial pepper-corn that he lost, but to that extent he was damaged. I shall overrule your objection.

Mr. McBride: Let me make one more statement before the Examiner rules.

Trial Examiner Purcell: Yes, put it on the record.

Mr. McBride: Obviously, counsel for the Commission's motives can't appear on the record. I must, therefore, object to how the words are going to look in black and white, having in mind that the statute under which this case is being tried is predicated to a considerable degree on "injury" to competition, and so when counsel takes it upon himself to take the words of the statute and put them in his questions, it then ceases to be a factual inquiry in the form of a question, and becomes a huge jump into legal conclusions, and, therefore, I must consistently object to those sort of questions.

Trial Examiner Purcell: Of course, my opinion on that is, Mr. McBride, that the mere fact that counsel uses a particular word for want of a better one, perhaps, or merely that if is incidental that the word as used by counsel happens to have also been used in the statute, has no bearing on the admissibility of the evidence or the import of the question.

1828 Mr. McBride: I can't quite agree with the examiner, for this reason: that once we have a question framed that elicits an answer without further thought on the part of the witness, that, on the face of it, presumably supports the thing that the statute is attempting to pro-

hibit, and we no longer have the factual setup on the record.

Trial Examiner Purcell: But the mere fact that this witness answers a certain question in a certain way does not have the effect of convicting the respondent of the charges.

Mr. McBride: Perhaps not as to one witness, but when counsel endeavors with a number of, or a series of witnesses to produce a cumulative effect, I must insist upon interrupting with my objections just so often as that question is propounded, and any one similar to it.

Trial Examiner Purcell: I was in hopes that having this discussion on the record you could see how the Examiner feels in the matter, and my reasons for overruling your objection.

You may go ahead.

Mr. Haslett: Read the last question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Yes, to an extent.

By Mr. Haslett:

Q. And if one of your competitors, Mr. Robinson, 1829 was paying $1.40 a case for Morton's round package salt and selling it for $1.63 a case, while at the same time you were purchasing Morton's salt at $1.50 per case and selling it at $1.65 a case to meet the competition of that particular customer, the differential between the purchase price of the customer who is favored with the lower price and the differential between the purchase price of your company and the sale price would be greater and benefit the favored customer to your detriment, would it not, sir?

Mr. McBride: Mr. Examiner, may I have that question read back? It sounded more like a statement on the record than a question.

(The question referred to was read by the reporter.)

Mr. McBride: I will object to the question because of the last phrase of it.

Trial Examiner Purcell: Because of what?

Mr. McBride: Because of the last phrase, reverting to my usual objection.

Trial Examiner Purcell: Objection overruled.

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you a document and

ask that it be marked for identification as Commission's Exhibit No. 144.

(The document referred to was marked "Commission's Exhibit 144" for identification.)

1830 Mr. Haslett: Mr. McBride, am I correct when I say that it is stipulated between counsel for the Respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 144 is a true and correct photostat copy of an invoice from the Morton Salt Company numbered 70750, to the Merchant's Wholesale Grocery Company, Columbia, South Carolina, under date of October 2, 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document into evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 144.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 144" was received in evidence.)

Mr. Haslett: Mr. Reporter, will you mark this instrument for identification as Commission's Exhibit No. 145?

(The document referred to was marked "Commission's Exhibit 145" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated by and between counsel for the respondent and counsel for the Commission that the document

1831 marked for identification as Commission's Exhibit No. 145 is a true and correct photostat copy of an invoice from the Morton Salt Company, numbered 80045, of commodities sold to the Merchant's Wholesale Grocery Company, Columbia, South Carolina, under date of January 5, 1942?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document into evidence Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the document described will be received into evidence and marked Commission's Exhibit No. 145.

(The document referred to, heretofore marked for iden-

tification "COMMISSION'S EXHIBIT 145" was received in evidence.)

Mr. Haslett: I think that is all from Mr. Robinson.

Cross-Examination by Mr. McBride.

Q. Mr. Robinson, I think you mentioned that you handle in addition to Morton's blue package, Myles salt and Worcester salt?

A. Yes, sir.

Q. Your principal line consists of the products of
1832 the Worcester Salt Company, isn't that correct?

A. Ask that again.

Q. Your principal salt line consists of the products of the Worcester Salt Company, isn't that correct?

A. I think that is correct, yes.

Q. Your emphasis is on that product, rather than on the Morton blue package, isn't that right?

A. Yes.

Q. Do you know of anybody in Columbia, or in the territory which your company serves around Columbia, who sells Morton's blue package for less than $1.65 per case?

A. For less than $1.65?

Q. That is right.

A. Yes, sir.

Q. Who is that?

A. You mean, the retail customer or the one who sells it?

Q. No, who is the wholesaler who sells it for less than $1.65?

A. Thomas & Howard.

Q. When has that happened?

A. I can't name the date, but some time recently, and has been going on for perhaps a year or two.

Q. Can you testify as to the instances when that has occurred?

A. No.

1833 Q. To whom was it offered, do you know, Mr. Robinson?

A. Yes, taking the buyer's word for it over the phone, and my salesman's word for it, it is H. L. Green Company in Columbia.

Q. And how many cases were involved when that happened?

A. I don't know, I didn't ask that.

Q. You don't know the date when that occurred?

A. No, they just said they had been buying it for that figure for some time.

Q. Had you ever sold them any salt before, of the Morton's blue package?

A. I don't know about that.

Q. Now, were there ever any other instances like that?

A. That is the only one I know of at that low price.

Q. That may have involved a quantity purchase, is that correct, of five cases or more?

A. It could have, as far as I know.

Q. Now, I think you said that Thomas & Howard often offered Morton's blue package for $1.65, and that in addition, there were others who offered it at that price, is that correct?

A. I don't think I said that.

Q. Well, you said Thomas & Howard was the main one that offered it on occasions at $1.65.

A. Yes.

Q. And I gathered there were others who offered 1834 it at the same price.

A. I wouldn't know about that. My inference is that there were.

Q. There may be some others, then, aside from Thomas & Howard?

A. Yes.

Q. Do you know of the occasions when Thomas & Howard have offered it at $1.65 and the names of the retailers?

A. No, sir.

Q. When did that occur, if you recall, Mr. Robinson?

A. It has been a frequent report coming in to our office from our salesmen all along. No definite occurrence, no definite place and time, that I can recall.

Q. But in none of those instances did you or the salesmen see any invoices from Thomas & Howard, you simply had the customer's word for it, is that correct?

A. That is all.

Q. And in no case did you know the amount involved or the terms of the purchase, is that correct?

A. No.

Q. I take it in your wholesale business, Mr. Robinson, that of all the commodities you handle, you may often have high prices and sometimes low prices. You never have the

lowest price on all the commodities that you offer, is that correct?

1835 A. Absolutely.

Q. In other words, you may be high on some lines and on others you may be low, or vice-versa, is that right?

A. Certainly.

Q. And I take it as a part of your operation on salt, or anything else that is involved in your wholesale business, that you may meet competition by lowering your price in some instances, or you may pass the business as the occasion demands, is that right?

A. That is a part of the game in all lines, including salt. You can't let them stay unadjusted too long, anyhow.

Q. Now, has the volume of your business increased over the past several years, your general volume?

A. Some.

Q. Then, I take it that in the process of meeting prices from your competitors, you don't necessarily mean that you have been injured in terms of ruining your business, is that right?

A. In terms of ruining my business?

Q. Well, let me state the question this way: I think in answer to one of Mr. Haslett's questions, you stated that if you had to reduce your price on Morton's blue package from $1.75 to $1.65 a case, that to that degree your business would be injured, wasn't that your statement?

A. Oh, yes.

1836 Q. Now, do you concede that your business has been injured every time you met the competition of competitors on any commodity that you handle?

Mr. Haslett: I object to that. It is beyond the scope of the direct examination, going into a phase of matters that we would never find the end of, finding the effect on competition of every item this man handles. I think it is way beyond the scope of direct examination.

Mr. McBride: If the Examiner pleases, I am seeking by a few questions to get the witness' definition of what he meant by his answer.

Trial Examiner Purcell: I will overrule the objection.

Mr. Haslett: Mr. Examiner, the Commission is interested in the effect of this man's business as to meeting prices on salt, not as to other commodities. We are interested only in salt here, not in any other products. If

this man only handled salt, he would certainly be injured as to that particular item, and the Commission looks at it as though that is the only item which he handles.

Trial Examiner Purcell: Mr. Haslett, you have already had occasion to point out your position in that regard to the Examiner, and I haven't altered my views from the first, and it is that any fair question which is put by the defense may be answered by the witness
1837 in order to show by comparison exactly what degree of damage this man or any other witness has suffered by reason of the competition. I do not apprehend that counsel for the respondent is going to attempt to go into thousands of items, and of course, I wouldn't permit him to, but I certainly think he should be entitled to go into it at some small length, into the inquiry along this line. I, therefore, overrule the objection.

Mr. Haslett: I note an exception.

Trial Examiner Purcell: You may have it, sir.

Mr. McBride: Will you read the question back, Mr. Reporter?

(The question referred to was read by the reporter.)

The Witness: I do, if it is on a highly nationalized item, similar to Morton's salt.

By Mr. McBride:

Q. You don't have the lowest prices on all commodities that are nationally advertised, do you, at any one time?

A. No, but at nearly all times we are competitive.

Q. There is no arrangement among the wholesalers to maintain any fixed price level on all nationally advertised commodities, is there?

Mr. Haslett: I object to that.

Trial Examiner Purcell: I will sustain the objection.

1838 Mr. McBride: I don't know the grounds, Mr. Examiner.

Mr. Haslett: Well, I can state the grounds very briefly. Mr. Robinson, or any of the wholesalers are not parties respondent to any complaint or action by the Federal Government for combining to fix prices or conspiracy under Section 5 of the Federal Trade Commission Act, and I think this question is highly improper. It has nothing to do with the issues of this case.

Trial Examiner Purcell: We won't go any further.

Thank you for stating the grounds for me, Mr. Haslett. My ruling stands, Mr. McBride.

Mr. McBride: I take it I can make my statement?

Trial Examiner Purcell: Yes, sir.

Mr. McBride: I am not accusing this man of conspiracy or attempting to make him a respondent to this or any other proceeding. I am trying to get at this price angle or this injury angle.

Trial Examiner Purcell: But that isn't the way to do it, Mr. McBride.

Mr. McBride: I note an exception to the ruling.

Trial Examiner Purcell: Very well, you may have your exception.

By Mr. McBride:

Q. How many cases of Morton's blue package
1839 business have you lost to Thomas & Howard in the year 1941, Mr. Robinson?

A. I don't know.

Q. You are not certain that you have lost any, is that correct?

A. I couldn't swear to it.

Q. Is the same answer true for the year 1940, and prior thereto?

A. What?

Q. Would your answer be the same with respect to the year 1940 and prior thereto, that you may or may not have lost business on Morton's blue package to Thomas & Howard?

A. I am pretty sure that we lost a good bit of it. I wouldn't say how much, but I will say a hundred or two cases.

Q. But I think you stated that the volume of your Morton's blue package had remained about the same, possibly increased a little over the past several years, wasn't that correct?

A. I didn't know that I was referring to salt. I thought you asked me about my business generally.

Q. You mean, on the previous question?

A. Yes, sir.

Q. No, I was confining that to salt only. Let me clarify that. You stated in response to the third or fourth question back that you couldn't state positively that you had lost any Morton's blue package salt business to
1840 Thomas & Howard during the year 1941.

A. That is right.

Q. Now, would your answer be the same with respect to the years 1940 and prior years, referring now to only Morton's blue package salt?

A. Well, since you asked it the second time, and me thinking of it a little bit, I know of one case, in one connection, that I have lost some business. That is the case I referred to a minute ago, about the $1.50 price, that I didn't attempt to meet, that I couldn't meet.

Q. But that is the only instance that you know of, positively?

A. Positively, yes, but the size of that business would handle quite a bit of salt during a year.

Q. But your volume on Morton's blue package salt, nevertheless has remained the same or possibly increased just a little during the past several years?

A. It looks to me like it is almost identical the past two years.

Mr. McBride: I believe that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Robinson, what was the price that Thomas & Howard quoted to Mr. Green?

A. His buyer informed my salesman and myself 1841 that it was $1.50.

Q. $1.50 a case?

A. Yes.

Q. And that is the price that you were paying for it?

A. Yes.

Q. And you didn't sell any salt to Green, did you?

A. No.

Q. You are not selling salt to Green today?

A. Not Morton's.

Q. Not Morton's salt?

A. I haven't for a couple of years.

Mr. Haslett: I think that is all.

Mr. McBride: I have no further questions.

Mr. Haslett: Thank you very much, Mr. Robinson.

(Witness excused.)

Trial Examiner Purcell: We will have a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: We will proceed, gentlemen.

Mr. Haslett: I will call Mr. Jack Martindale Faust.

JACK MARTINDALE FAUST was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

1842 *Direct Examination by Mr. Haslett.*

Q. What is your full name, Mr. Faust?
A. Jack Martindale Faust.
Q. Where do you reside, sir?
A. Columbia, South Carolina.
Q. In what business are you engaged?
A. Wholesale grocery business.
Q. With what company are you connected?
A. The Grocery Supply Company.
Q. And where is that company located?
A. 110 Lincoln Street, Columbia, South Carolina.
Q. And what is the business of the Grocery Supply Company?
A. We distribute food stuff, principally.
Q. Groceries and allied products?
A. Yes.
Q. Do you sell them to the retailers?
A. Yes, sir.
Q. And what position do you hold with them?
A. I am manager.
Q. You are manager of the Grocery Supply Company?
A. That is right, sir.
Q. And has it any branches?
A. Yes, sir, the Grocery Supply Company is a trade name. Dixie Produce Company, Inc., is the company,
1843 and we are a part of the Dixie Produce Company, Inc.
Q. Are you a subsidiary of the Dixie Produce Company, Inc.?
A. Yes, sir.
Q. Where is the principal office of the Dixie Produce Company located?
A. Columbia, South Carolina.
Q. And is that in the same building where the Grocery Supply Company is located?
A. No, sir.
Q. Where is that located?
A. 1000 Assembly Street.

Q. Does that also sell groceries and allied products to the retailers, sir?

A. No, sir.

Q. What is the business of the Dixie Produce Company?

A. Produce, fruits and produce.

Q. They sell only perishable fruits and produce to the retailers?

A. That is correct, yes.

Q. And the Grocery Supply Company is a branch of the Dixie Produce Company that handles only staple products of groceries and allied products which they sell to retailer customers?

A. That is correct, sir.

1844 Q. How long have you been associated with the company, sir?

A. I have been there a year this past February.

Q. How long have you been in the grocery business?

A. About eight years, to my knowledge.

Q. And with what company were you connected prior to the time you became manager of the Grocery Supply Company?

A. C. D. Kenny Company.

Q. C. D. Kenny Company?

A. Yes.

Q. At its branch here in Columbia?

A. I was manager of this branch here, yes.

Q. Now, has the Dixie Produce Company any subsidiaries other than the Grocery Supply Company, any other branches?

A. Yes, they have a branch in Gastonia, North Carolina, P. P. Leventis Company, and also the Gulf Fruit Company of Charleston, South Carolina.

Q. Well, do they sell groceries or produce?

A. Just produce.

Q. Then, am I correct when I state that the Grocery Supply Company is the only branch of the Dixie Produce Company that sells groceries and allied products to the retailer customers?

A. Yes, sir.

Q. Is the Grocery Supply Company a corporation?

A. Well, it is incorporated through the Dixie Produce Company. Dixie Produce Company is a corporation.

1845 Q. And is Dixie Produce Company a corporation incorporated under the laws of South Carolina?

A. Yes, sir.

Q. What territory is covered by the Grocery Supply Company out of Columbia?

A. We have been working a radius of approximately 45 miles.

Q. Forty-five miles?

A. Yes.

Q. Has the Grocery Supply Company any competitors at all, sir?

A. Yes, sir.

Q. Will you name some of those competitors?

A. Thomas & Howard, C. D. Kenny, Hartley Grocery Company, Merchant's Wholesale Grocery, and Rawl Distributing Company.

Q. Does it, in the course of its business, purchase salt from the various processors?

A. Yes, sir, we buy and sell salt.

Q. Do you purchase any salt from the Morton Salt Company?

A. Yes, sir.

Q. And what type of salt does your company purchase from the Morton Salt Company?

A. Well, we have in the past year purchased practically all kinds of bulk and square packages, and also round packages of iodized and free running.

Q. That is their blue label?

1846 A. Yes, sir.

Q. How are orders placed with the Morton Salt Company by your company?

A. How are they placed?

Q. Yes.

A. I generally buy them myself through the broker, or Morton's representative.

Q. Through the broker situated here in Columbia?

A. Yes, sir.

Q. Or its representative that calls upon you?

A. That is right.

Q. And as a result of which, commodities are shipped to you by the Morton Salt Company?

A. That is right.

Q. Do you purchase on a carload basis?

A. No, sir, I haven't purchased on a carload basis.

Q. Do you purchase in pool cars?

A. Yes, sir.

Q. Where is the car situated when it arrives in Columbia?

A. Well, at the Johnson-Simmons Brokerage warehouse is where I have unloaded, I believe, all of the salt I have bought from Morton.

Q. Does your company haul the products from the siding to your place of business?

A. Yes, sir.

1847 Q. In its own trucks?

A. Yes, sir.

Q. Are you compensated in any way by the Morton Salt Company for that service?

A. No, sir.

Q. I believe you stated you purchase some free running and iodized salt from the Morton Salt Company?

A. Yes, sir.

Q. In the blue package?

A. Yes, sir.

Q. Do you know the price which your company pays the Morton Salt Company for that particular commodity?

A. Yes, sir.

Q. What is that price?

A. $1.50 a case.

Q. And is that the price that is in effect at the present time?

A. Yes, sir.

Q. Now, has that price been in effect for quite a long time, sir?

A. To my knowledge, since I have been buying, it has been that price.

Q. And how long has that been?

A. The past three years, I would say, at least. I wouldn't swear to that.

1848 Q. But to the best of your knowledge, the past three years?

A. Yes, sir.

Q. What is the price your company charges its customers per case for round package blue label free running and iodized salt?

A. The general price of $1.65 is all we are able to get for it, sir.

Q. Do you sell it at any time below that price?

A. On some occasions I have sold it lower than that, sir.

Q. What is the price you have sold it at, sir, lower than the price of $1.65?

A. Well, $1.60 quite often, and at one time for $1.55.

Q. Why did you sell it at $1.60?

A. To get the business.

Q. To get the business?

A. Yes, sir.

Q. You mean, someone else had quoted at $1.60 price for it, sir?

A. Yes, sir.

Q. And you lowered your price in order to retain the business?

A. Yes, sir.

Q. Why did you reduce your price to $1.55 to some customers?

A. Well, that was only one occasion, that was on a bid.

1849 Q. On a bid?

A. Yes, I bid every month on it, and I had to come down to $1.55 to finally find out what I could get it for.

Q. Was that to a state or local institution?

A. A local institution.

Q. Now, when you sold it at $1.60, who was the competitor who quoted that lower price which you had to meet?

A. Well, it would be hard to say. Thomas & Howard and C. D. Kenny Company both have sold salt at that price.

Q. At that $1.60 price?

A. Yes.

Q. Did you retain the business by lowering your price to meet that price?

A. When I have lowered the price, I have retained the business, yes.

Q. Has there been an occasion where you didn't lower the price when the lower price had been quoted by a competitor?

A. On some occasion, yes, sir.

Q. And on those occasions, did you lose the business?

A. Yes, sir. Could I explain something right there?

Q. If it is in connection with your last answer, why, you can, sir.

A. You asked me did I lose the business or did I keep it. I can explain why I lost the business or why I kept it, if you would like for me to.

1850 Q. All right, sir, why did you lose the business?

A. Well, in a case where a man would just want to buy salt and nothing else, I would pass it up, but to get other business with it, is where we cut the price.

Q. Then when you cut the price in order to meet a lower price quoted by a competitor, it was to get a general order for merchandise, and not just a single order for salt, is that correct, sir?

A. That is right.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. No, sir.

Q. Do you know approximately the number of cases that your company purchases, say, during the year 1941, from the Morton Salt Company of the round package salt?

A. No, sir, I don't.

Q. Do you know approximately the number of cases?

A. I would say somewhere in the neighborhood of 150 cases.

Q. 150 cases?

A. Yes, sir.

Q. Has that figure been constant for the past several years, or has it decreased or increased?

A. We have only been in business a year.

Q. Just one year?

A. Yes.

1851 Q. I believe you stated you handle other types of salt that you purchase from the Morton Salt Company, such as Kleer table salt?

A. Yes, sir.

Q. And Kleer fine salt?

A. Yes, sir.

Q. Does your company receive any discounts or allowances from the Morton Salt Company upon the purchases by your company of the Kleer salt?

A. I don't know whether it does or not, but I don't believe so. I just don't know, to tell you the truth.

Q. You don't know whether your company receives any discount or not on the Kleer table salt?

A. No, sir, I couldn't tell you.

Q. Does your company purchase $50,000 worth of salt from the Morton Salt Company during a 12 consecutive months' period?

A. No, sir.

Q. Does it purchase $50,000 worth of salt from all processors of salt during a 12 consecutive months' period?

A. No, sir.

Q. Does it purchase near that amount, sir?

A. No, sir.

Q. It would be far less than that?

A. Far less, yes.

1852 Q. It doesn't purchase 5,000 cases of salt per year, does it, of the free running and iodized salt?

A. No, sir.

Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's Exhibit 146?

(The document referred to was marked "Commission's Exhibit 146" for identification.)

Mr. Haslett: Is it stipulated, Mr. McBride, between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 146 is a true and correct photostat copy of an invoice from the Morton Salt Company, numbered 63476, directed to the Grocery Supply Company, Columbia, South Carolina, under date of August 26, 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked Commission's Exhibit No. 146.

(The document referred to, heretofore marked for identification, "COMMISSION'S EXHIBIT 146" was received in evidence.)

By Mr. Haslett:

1853 Q. Mr. Faust, I hand you what has been admitted in evidence as Commission's Exhibit No. 146, and ask you to state whether or not that is typical of invoices passing between the Morton Salt Company and the Grocery Supply Company of Columbia, South Carolina, for the type of commodities shown thereon?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's Exhibit No. 147?

(The document referred to was marked "Commission's Exhibit 147" for identification.)

Mr. Haslett: It is stipulated between counsel for the

respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 147 is a true and correct photostat copy of an invoice passing between the Morton Salt Company, numbered 70751, and directed to the Grocery Supply Company of Columbia, South Carolina, under date of October 2, 1941.

Mr. McBride: That is correct.

Mr. Haslett: I offer the document into evidence.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 147.

1854 (The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 147" was received in evidence.)

By Mr. Haslett:

Q. Mr. Faust, I hand you what has been marked and entered into evidence as Commission's exhibit 147, and ask you to state whether or not that is typical of the invoices passing between the Morton Salt Company and the Grocery Supply Company for the type of commodities that appear thereon?

A. Yes, sir.

Q. Mr. Faust, is your business affected by the fact that some of your competitors pay $1.40 a case for Morton's free running and iodized salt, while at the same time you pay $1.50 a case for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: To some extent, yes.

By Mr. Haslett:

Q. And would you mind explaining that, to what extent would it be affected, sir?

A. Well, it naturally causes us to take a short mark-up on merchandise, where if we were paying $1.40, why, we would have the same percentage of mark-up that our competitors have.

Q. Do you mean that your margin of profit would
1855 be greater if you paid $1.40 for it, the same as your competitors were paying for it?

A. Yes, sir.

Q. What effect would it have on your business if some

of your competitors were paying 80-cents a case for the Kleer table salt, while at the same time you were paying 85-cents a case for it?

Mr. McBride: The same objection.

Trial Examiner Purcell: Objection overruled.

The Witness: That would stop the sale of that salt for us.

By Mr. Haslett:

Q. It would, sir?

A. Yes.

Q. How would that be brought about, sir?

A. Well, that salt is sold on a very close margin. Five-cents would ruin the sale. The difference in price would almost kill the sale of a package of Kleer salt.

Q. And if someone was purchasing it 5-cents cheaper than you, why, that would have a bad effect upon your business?

A. Yes, sir.

Q. Your salt business?

A. Our salt business, yes.

Q. What effect would it have on your business if someone was selling Morton's salt, one of your competitors

1856 was selling Morton's salt processed under the brand name of Kleer table salt, to your customers at 85-cents a case, while at the same time you were paying 85-cents a case and selling it at 90-cents?

A. Well, that would just ruin the sale. We just wouldn't sell it.

Q. You would either have to meet the price or lose the business?

A. That is correct.

Q. If you met the price, you wouldn't make any profit?

A. That is right, sir.

Q. Would the same be true as to any other type of salt that you purchase from the Morton Salt Company?

A. Yes.

Q. Do you do any missionary work in connection with the resale of Morton's products to your customers, promotional work?

A. Have I had any, did you say?

Q. I say, do you do any?

A. No, sir.

Q. Do Morton's salesmen in this territory solicit the

trade for you and try to increase your sale of Morton's products?

A. He solicits the trade for any jobber, is my understanding, and they always fall where they may. If
1857 they buy through our company, we get the order, or to any other company they would care to buy through.

Q. Is that determined by the customer?

A. Yes.

Q. Who purchases the products from the wholesaler?

A. Yes.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. Mr. Faust, I believe you stated that as nearly as you could recall in the year your company has been in business, you have purchased about 150 cases of Morton's blue package?

A. That was approximately, more or less, I wouldn't say definitely.

Q. That is your best estimate on that?

A. Yes.

Q. How many of those cases, having in mind that is an estimate, how many of those cases did your company sell at $1.60?

A. I wouldn't know how to give you any reply on that. Quite a few of them, though.

Q. Has it been 10 or 20?

A. It could have been.

Q. It could have been 10 or 20, as far as you know, is that correct?

1858 A. Yes, it could have been more.

Q. More or less, as far as you know?

A. It couldn't have been much less, no, sir.

Q. What is your company's price for the resale of Kleer brand salt to the retail trade?

A. We have a price of 95-cents at the present time, right now.

Q. Do you know of anybody in Columbia who sells it for 85-cents?

A. I couldn't say right now, no, sir.

Q. What has been the volume of purchases by your company of the Kleer brand package during the past year, Mr. Faust, as near as you can estimate it?

A. I don't know how many cases to say on that, sir. We have bought 150 at a time, or 200, maybe more than that. I can't remember just offhand.

Q. You have carried it during the year and kept turning it over in your sales to the retail trade, is that correct?

A. We have sold quite a bit to the retail trade, yes.

Q. I believe you stated in answer to one of Mr. Haslett's questions that if anybody in Columbia had purchased the Kleer table salt at 80-cents a case on the date of the invoice, being Commission's exhibit 147, showing the purchase price by your company of 85-cents a case, that it would put you out of that type of salt business. Do I
1859 recall your statement correctly on that?

A. I don't understand your question, please, sir.

Trial Examiner Purcell: Read the question, Mr. Reporter.

Mr. McBride: Perhaps I can reframe it, Mr. Examiner.

Trial Examiner Purcell: Very well.

By Mr. McBride:

Q. I have Commission's exhibit No. 147, which is the invoice of October 2, 1941, and it shows a sale price to you of 85 cents for Morton's Kleer table salt, 36/1½'s. In that connection, Mr. Haslett asked you whether or not you would be injured, as I recall, if somebody at the same time in Columbia was buying the same salt at 80 cents a case, and I think you said it would put you out of that type of salt business, is that correct?

A. That is right, sir.

Q. I think you also testified that before you became manager of the Grocery Supply Company, you were manager of C. D. Kenny Company in Columbia?

A. That is right, sir.

Q. How many salesmen does your company have, the Grocery Supply Company?

A. We have two full-time salesmen and myself.

Q. And they cover the entire radius of forty or
1860 fifty miles handling the entire line of commodities, is that correct?

A. That is right, sir.

Q. You stated that on a few occasions, as you recall, you had to meet a competitor's price on Morton's blue package of $1.60 a case?

A. That is right, sir.

Q. When did that happen?

A. Well, that has happened all along, that is not just one time. That happens quite often. I can't recall the names, I never paid that much attention to it. I have known all the time that when we have to do that, that would come up.

Q. How did you know about it, Mr. Faust?

A. The salesmen tell me, and customers tell me; I have had any number of persons to tell me.

Q. But as I recall your testimony on direct examination, you had no certain reports as to who quoted these customers the $1.60 price, is that correct?

A. I was under the impression I said this price had been quoted by the Thomas & Howard Company and C. D. Kenny Company.

Q. That was your general impression, that you testified about that, is that right?

A. Yes, sir.

Q. Do you know whether or not of your own knowledge in each of those instances it was Thomas & Howard or C. D. Kenny that quoted that price?

1861 A. Well, the only thing I have to go by is what my customers would tell me.

Q. Did they tell you in each instance that it was Thomas & Howard or C. D. Kenny Company?

A. Mainly Thomas & Howard.

Q. And how many cases of salt were involved in those instances?

A. I couldn't say that, sometimes five or ten cases.

Q. You have no certain knowledge as to how many were involved?

A. No, sir.

Q. It would have been possible, would it not, Mr. Faust, that one of your other competitors here in Columbia quoted the $1.60 price to these customers, other than Thomas & Howard and C. D. Kenny Company?

A. It could be possible.

Trial Examiner Purcell: Did you say it could not be possible?

The Witness: I said it could be possible

By Mr. McBride:

Q. What is the usual mark-up on the commodities which your company handles, Mr. Faust?

A. That all depends, sir, on the kind of merchandise it is. Some items carry more mark-up than others.

Q. Ten per cent or twelve per cent mark-up is re-
1862 garded as a fairly reasonable mark-up in the whole-
sale business, is it not?

A. I would say 12 per cent now would be a fair mark-up.

Q. It would be a fair mark-up?

A. Yes, sir.

Q. That is in terms of cost?

A. Yes.

Mr. McBride: I believe that is all.

Mr. Haslett: I have no further questions.

(Witness excused.)

Mr. Haslett: It is hereby stipulated and agreed by and between counsel for the respondent and counsel for the Commission that the following statement of facts may be made a part of the record herein, with the same force and effect as though testified to under oath.

1. That the respondent herein, Morton Salt Company, owns, operates and controls several subsidiaries for the sale, manufacture, and distribution of salt.

2. That the practices and policies of all wholly owned subsidiaries are controlled, managed, and effectuated by the respondent herein, Morton Salt Company. The sales practices and policies of such wholly owned subsidiaries are similar to the sales practices, and policies of the respondent, Morton Salt Company, which have heretofore been testified to by the president of the respondent,
1863 Morton Salt Company, Mr. Daniel Peterkin.

3. That if any policies, practices, and operations of the Morton Salt Company are found to be unlawful under the Robinson-Patman Act by the Federal Trade Commission, after trial, examiner's report, briefs and oral argument before the Commission, and when and if an order be issued by the Federal Trade Commission directing the respondent, Morton Salt Company, herein to cease and desist from certain practices in connection with the sale of its products, that such order, if and when issued, shall be and will be binding upon any and all wholly owned subsidiaries controlled, managed and operated by the respondent, Morton Salt Company, as to such practices found to be unlawful, if any, with the same force and effect as upon the respondent herein, Morton Salt Company.

Mr. McBride: For the purpose of this proceeding only, it is so stipulated on behalf of the respondent, Morton Salt Company.

Mr. Examiner, I make my usual request at this time for permission to withdraw Commission's exhibits numbered 135-A to 147, both inclusive, for the purpose of photostating the same, and returning the originals to the record.

Trial Examiner Purcell: Granted, Mr. McBride.

1865

Hearing Room,
Chamber of Commerce,
Columbia, South Carolina,
Saturday, May 23, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

1866 Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that the following statement of facts may be made a part of the record herein with the same force and effect as though testified to under oath.

That in regard to making a remittance by a customer of one of the subsidiaries of the Morton Salt Company, the president of such subsidiary wrote to such customer under date of March 28, 1938, as follows:

"Gentlemen:

"Our broker, Mr. Gilbert C. Bell, of your city sub-
1867 mitted to us under date of March 10, your check numbered 2931, dated February 23, offered in payment of an invoice of ours against your company dated July 27, 1937, amounting to $89.75. You showed a deduction of $7.50 which our credit department was unable to reconcile, and accordingly advised Mr. Bell. Mr. Bell advised us that you stated you made a deduction of 5-cents per case on 150 cases of 36/24 ounce salt to meet the price

of C. D. Kenny Company, on the grounds that C. D. Kenny Company were buying salt that much cheaper because of the size of their purchases.

"We regret that we are unable to accept the check you have tendered on this basis, and are accordingly returning it directly to you with this letter.

"The Robinson-Patman Act specifically states that it is not unlawful to make variations in price if the variations are based on differences in quality or quantity, providing the differences in price based on the differences in quantity reasonably reflect differences in cost of selling. Presumably, it is up to any manufacturer who grants a quantity discount to prove that the quantity discount which he grants reasonably reflects the fact and proves it, that it is cheaper for him to sell these larger quantities and buyer than it is
to sell smaller quantities and buyers.

1868 "One case has already been heard by the Federal Trade Commsision involving the matter of quantity discounts. I refer to the Kraft-Phoenix Cheese Company. The case was dismissed presumably because the quantity discounts given were proved to have reasonably reflected differences in cost of selling. Several other cases have come up for preliminary hearing involving this same issue and have been dismissed. As our counsel interprets the Robinson-Patman Act, we must treat our customers equal, and not discriminate against them. Obviously, if we permit you to make a deduction because you are in competition with C. D. Kenny Company who has bought salt from somebody else, and from them obtained the quantity discount, then we must permit any of our customers to make a deduction from any of our invoices whenever they find themselves faced by prices which they consider lower than those at which they bought from us. Obviously, we cannot permit our customers to determine our prices to this extent. Equally, obviously, we cannot permit deductions in one case without permitting deductions in all cases. We take this opportunity to point out that the price at which we sold this merchandise was indicated in the signed order which you gave our salesman. It was further shown in
our acknowledgment of the order. It was again shown

1869 when shipment was made and our invoice was rendered to you, and all of this information was in your hands last June and July.

"Our records fail to disclose that either then or since have you indicated that the price at which you purchased

from us was not perfectly satisfactory at that time. Had it not been, the presumption is that you would have advised us not to ship the merchandise to you. It was not until we received your check dated February 23rd that this issue was raised by you, and this check is dated seven months after the merchandise was invoiced to you. We are confident that had you sold one of your customers last July, and had this customer finally offered payment seven months later, but then, and not until then, raised the issue as to price, you would then feel that the customer's position was not tenable.

"Our counsel advises that legally we cannot permit the deduction. We are, therefore, returning this check to you with the request that you send us a check in full payment of this invoice."

Signed by the treasurer of one of the wholly-owned subsidiaries of the Morton Salt Company.

In reply to such letter dated March 28, 1938, the customer of such wholly-owned subsidiary stated as fol-
1870 lows under date of April 4, 1938:

"Gentlemen:

"We acknowledge your letter of the 28th. We are buying practically all of our salt in pool cars and C. D. Kenny Company is in practically every car that is coming in here from the different manufacturers. Kenny gets the concession mentioned on account of their quantity purchases. He gets his salt at the special price, and we are invariably in these cars with Kenny. It does not cost any more to handle our shipment than it does his, and therefore, we get it at the same price as Kenny, which we understand is in accord with regulations you mentioned. Kenny is selling this salt to the trade here at 90-cents to 92-cents per case, so you see that it would be impossible to sell salt at any profit at all unless we were on the same basis with him, and for this reason all of the salt we buy is bought on this basis from different manufacturers.

"We think we mentioned this fact to your representative when this order was placed, as we invariably do when placing salt orders, and would thank you to handle accordingly.

"Thanking you, we are—"

Signed by the customer of the subsidiary of the Morton Salt Company.

1871 In reply to such letter of such customer under date of April 4, 1938, the president of such wholly-owned subsidiary of the Morton Salt Company, under date of April 14, 1938, stated as follows:

"Gentlemen:

"We must grant that your point to the effect that if you participate in a pool car with a quantity buyer like C. D. Kenny Company, and buy substantially the same amount of merchandise, the sale to you is no more expensive than the sale to Kenny. That is certainly true in that particular instance. On the other hand, the total size of C. D. Kenny's purchases, and the fact that there are no credit losses entailed in selling to C. D. Kenny Company as against the necessary credit risk involved in selling to the small buyer, develops a smaller sales cost for that particular manufacturer. Presumably, that manufacturer feels quite capable of proving this to be a fact. With that, however, this company has nothing to do. We do little or no business with C. D. Kenny Company. The decision we have to make is whether or not we can legally permit a customer like yourselves to make a deduction in order to bring himself in line with prices enjoyed by C. D. Kenny Company due to their large purchases.

"You will readily appreciate that the amount of
1872 this deduction, $7.50 is not of itself important. The important fact to us is that our attorneys advise we cannot permit the deduction. It would be more gracious to accept this, and it would certainly eliminate this correspondence, but our counsel advises that under the law we cannot do it without setting up a precedent, so we, therefore, regretfully return your check with this explanation; and must again request your payment in full."

Signed by the treasurer of the subsidiary wholly-owned and controlled and managed by the Morton Salt Company.

Mr. McBride: It is so stipulated.

Mr. Haslett: I will call as my first witness, Mr. T. L. Hoffman.

THOMAS LABERTA HOFFMAN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Hoffman, will you state your full name for the record, please?

A. Thomas Laberta Hoffman.

Q. And do you reside in Columbia, South Carolina?

A. Yes.

1873 Q. And in what business are you engaged, sir?

A. Well, I am manager of the Grocery Department, Silvers.

Q. Silvers?

A. Silvers.

Q. And what is Silvers?

A. Well, you mean the type of store it is?

Q. Yes, what is it?

A. It is a variety store, the way we put it. Of course, it is groceries and most anything you want to buy.

Q. And does it have a large grocery department?

A. We think it is pretty good sized.

Q. And is Silvers owned by any particular company or group of people?

A. Well, H. L. Green & Company, Inc., own it.

Q. And where is the H. L. Green Company located?

A. 902 Broadway, New York.

Q. And it has various stores of the type of which you are manager of the grocery department, located throughout the country?

A. Yes, sir.

Q. And where is the Silvers Store located here, sir, in Columbia?

A. 1546 Main Street.

Q. In Columbia, South Carolina?

A. In Columbia, South Carolina.

1874 Q. And what are your duties as manager of the grocery department?

A. Well, buyer and display manager.

Q. Do you handle the purchasing of all of your requirements?

A. Yes.

Q. And does the H. L. Green Company sell groceries and allied products direct to the consuming public?

A. Yes.

Q. Does your company handle or buy salt?

A. Yes.

Q. Does it handle any products manufactured by the Morton Salt Company?

A. Yes, their round package salt. Of course, we handle all types of salt.

Q. But you do handle the round package salt?

A. Yes.

Q. And from whom do you now purchase your round package salt that you resell to the consuming public?

A. Mostly from Thomas & Howard.

Q. And how long have you been purchasing from Thomas & Howard?

A. Well now, do you mean just the salt?

Q. Yes, just the salt.

A. Well, since we have been in business, I guess. It is hard to say just how long, but I would say five or six years.

1875 Q. And has Thomas & Howard been your whole source of supply for Morton's salt for the last six years?

A. No; I wouldn't say that.

Q. You have purchased from other wholesale grocery men here in Columbia?

A. That is right.

Q. Morton's round package salt?

A. Yes, sir.

Q. What is the price that your company now pays Thomas & Howard for the round package salt per case?

A. Our last price was $1.50 per case.

Q. $1.50 per case?

A. That is right.

Q. And that price has been in effect for how long, sir?

A. I would say for a year and a half or two years, probably.

Q. The $1.50 price has been in effect?

A. That is right.

Q. From what other wholesale grocery men in the city of Columbia do you purchase most of your other types of grocery products?

A. Well, Merchant's Wholesale Grocery.

Q. About what percentage do you buy from the Merchant's Wholesale of the groceries that you resell to the consuming public?

1876 A. Well, I would say around 75 per cent.

Q. And do you purchase any round package salt from the Merchant's Wholesale Company at the present time?

A. We have, but not in the last few months.

Q. Does the salesman of the Morton Salt Company call upon you and solicit orders for your requirements of Morton's salt?

A. Yes.

Q. What is that salesman's name?

A. Jimmie McAllister.

Q. That is the same gentleman who is sitting in this room?

A. The very same gentleman.

Q. And when he solicits orders from you, does he ask you who you want to furnish you with your requirements of Morton's salt?

A. Usually he does, yes.

Q. And you tell him Thomas & Howard?

A. Yes, that is usually my reply.

Q. Does he know the price at which Thomas & Howard is giving you on the round package salt per case?

A. Well, I don't know that he does know that price. He doesn't put it on his order.

Q. It is not on his order?

A. No, he leaves that open.

Q. He leaves that open?

1877 A. Yes.

Q. And who were you purchasing salt from prior to the time that you got the $1.50 price from Thomas & Howard?

A. Well, I don't know, that would be hard to say. It might have been Thomas & Howard and it might have been Merchant's Wholesale Grocery or C. D. Kenny. We buy from all of them, and I don't remember just when we got the $1.50 price.

Q. How was the $1.50 price given to you? Did you ask for it, or was it offered to you?

A. Well, as far as I know, it was just offered to me.

Q. It was offered to you?

A. Yes, sir.

Q. By Thomas & Howard?

A. Yes.

Q. Did you advise any of your other wholesalers of the price at which you were paying Thomas & Howard for the round package salt per case?

A. Some of the salesmen, they very often ask me the different prices that we pay on things, and I have told some of them how much we pay Thomas & Howard.

Q. For the round package salt?

A. For the round package salt.

Q. What is the reason that you give your business to Thomas & Howard on the round package salt?

A. Well, the 10-cents a case, that is the real reason.

1878 Q. Did you know that that was the price at which Merchant's Wholesale Grocery Company and other wholesale grocers in Columbia were paying the Morton Salt Company for their particular type of salt per case?

Mr. McBride: I object to that question, Mr. Examiner. I don't think it is at all relevant to the issues whether this witness knew what any other wholesaler in Columbia was paying for that round package. He is a retail buyer and he is shopping for such prices as he can get.

Mr. Haslett: Mr. Examiner, the question calls for either a yes or no answer. I asked him whether or not he knows.

Trial Examiner Purcell: Objection overruled. Just say yes or no.

By Mr. Haslett:

Q. What was your answer?

A. Now, what was the question again?

Mr. Haslett: Read the question back, please, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I don't know just how to answer that.

By Mr. Haslett:

Q. Do you understand the question?

A. Yes, I understand the question, and I know that is what they say. I couldn't swear to it.

1879 Q. You say you know what they say?

A. What they tell me.

Q. And who do you mean by "they," sir?

A. Well, Merchant's Wholesale.

Q. That that was the price at which they were paying for it, sir?

A. Yes.

Q. Did you ever request them to give you the $1.50 price?

A. No, sir.

Q. What does your company resell it to the consuming public for, per package?

A. Seven and one-half cents.

Q. Seven and a half cents?

A. Yes, sir.

Q. Two packages for fifteen?

A. That is right.

Q. Are you in competition with other retailers, other retail grocery stores, in the city of Columbia?

A. Yes, sir.

Q. Also with chain grocery stores?

A. Yes, sir.

Q. Such as A&P?

A. Yes, sir.

Q. Could you name some of your competitors that operate chains?

1880 A. Well, Big Star, Drake-Edens, Piggly Wiggly and Dixie Home Stores. Those are the larger ones.

Q. Do you purchase any other type of salt from Thomas & Howard that is processed by the Morton Salt Company?

A. Not at this time, no, sir.

Q. Have you ever purchased any of the square 5-cent salt?

A. Yes, sir.

Q. Do you know the price at which your company is paying Thomas & Howard for that particular type of salt per case?

A. Well, it has been different prices, but right now I don't remember just offhand. It has been some time since I have bought any from them.

Q. Approximately how many cases of Morton's round package salt does your company purchase per year from the Thomas & Howard Corporation here in Columbia for resale to the consuming public of Columbia?

A. I would say about 175 cases.

Q. About 175 cases of the round package salt per year?

A. Yes.

Q. I believe you stated that a large percentage of your requirements of groceries is purchased through the Merchant's Wholesale Grocery Company?

A. That is right.

Q. If Merchant's Wholesale Grocery Company offered you the price of $1.50 a case on the round package
1881 salt, would you purchase from them?

A. Well, I would at least split the business.

Q. But the real reason that you purchase it from Thomas & Howard is because you are getting the $1.50 price?

A. That is right.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. Have your purchases of Morton's blue package been about 175 cases a year for the past several years?

A. Approximately.

Q. Practically no change in the volume of purchases?

A. That is right.

Q. That was true prior to the time you got the $1.50 price, as well as after?

A. Well, I wouldn't say we were selling that much then. Of course, I don't say the 10-cents a case causes that, but salt has increased.

Q. But the increase, if any, may well have been just a general increase in your business?

A. Yes.

Q. And any increase wouldn't have been caused necessarily by the change in the purchase price?

A. No, sir, because we sold it at the same retail price.

Q. In other words, your retail price remained un-
1882 changed both before and after your purchase arrangement with Thomas & Howard?

A. That is right.

Q. Now, when you buy salt for your store, do you buy in fairly substantial quantities on each order?

A. Well, we usually book 25 to 50 cases at a time.

Q. A quantity purchase?

A. That is right, but we draw it out of Thomas & Howard's stock at five cases at a time. They hold the balance down to be used as needed.

Q. When you place the order for 25 cases, are you invoiced for it at that time?

A. No, sir, we are invoiced as we draw it out, five cases at a time.

Q. But it is only booked in 25 case-lots?
A. That is right.
Q. Now, with respect to the other types of commodities that you handle, do you generally buy those in quantity amounts the same as you do on salt?
A. Yes, sir.
Q. Somewhat the same arrangement on all commodities as you have on Morton's Blue package, is that right?
A. Very similar.
Q. As a result of your quantity purchases on that basis, do you generally enjoy a lower cost price to yourself
1883 on the rest of the line as you do on Morton's blue package?
A. Yes.
Q. That would be true even with your purchases from Merchant's Wholesale Grocery as well as any other source of supply?
A. They work close with us, yes. It is a good price.
Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. Do you know of any other commodity that you are buying at cost to the wholesaler?
A. No, sir.
Mr. McBride: I object to that question, Mr. Examiner.
Trial Examiner Purcell: Off the record.
(A discussion was had off the record.)
Trial Examiner Purcell: Back on the record. The objection is overruled. The answer may stand.

By Mr. Haslett:

Q. It would make no difference whether you purchased one case or ten cases, you would get the $1.50 price from Thomas & Howard, isn't that true, sir?
A. As far as I know.
Q. Quantity wouldn't have anything to do with the fact that you are getting the low price?
1884 A. Well, it hasn't so far, we have no written agreement.
Q. The price might advance tomorrow and it might go down tomorrow?
A. That is right. We expect to take it, whichever way it went, up or down.

Q. It just happens that it has been in effect for the last year and a half?

A. That is right.

Q. I see.

Mr. Haslett: I think that is all, sir.

Recross Examination by Mr. McBride.

Q. You have in the past purchased in lots of 25 cases, as you previously described?

A. Yes, sir.

Q. You have never attempted to buy on the one case basis from Thomas & Howard at this price, have you?

A. Not salt, no, sir.

Q. So that Thomas & Howard might or might not be willing to give you that price if you ordered in less than 25 case quantities?

A. That is true.

Q. I assume you have had that same experience in the other commodities?

A. Yes, sir.

1885 Mr. McBride: I think that is all.

Redirect Examination.

By Mr. Haslett:

Q. Have you been offered that price by any other wholesaler here in Columbia?

A. No, sir.

Q. Is Thomas & Howard the only one?

A. As far as I remember, the only one.

Q. And the reason for the diversion of the business from other competitors to Thomas & Howard was the lower price quoted by Thomas & Howard?

A. That is right.

Mr. Haslett: I think that is all.

Mr. McBride: In line with that last question, I have one further question, Mr. Examiner.

Recross Examination by Mr. McBride.

Q. Counsel just asked you about the diversion of your business from other wholesalers than Thomas & Howard. As I understood your previous testimony, you didn't recall but what you may have been buying salt from Thomas & Howard prior to the $1.50 price, is that right?

A. Well, we were buying it from different ones on the round salt. Any time they gave us that price, we gave it all to them on the salt only.

1886 Q. Some of it may have been purchased from Thomas & Howard, though, even prior to the $1.50 price?

A. Yes.

Q. You don't remember the ratio of your purchases between the various wholesalers?

A. No, sir.

Q. It may have been a few cases from one and a few cases from another, and several cases from Thomas & Howard, as nearly as you can recall?

A. That is right.

Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Hoffman, prior to the time that you gave your business to Thomas & Howard, did you try to equally divide the salt business between the various wholesalers in town that had the same price?

A. Yes, sir.

Q. And then when you switched and gave all of your business to Thomas & Howard, you did that as a result of the low price quoted by Thomas & Howard?

A. Yes, sir.

Q. So that you could get the 10-cents a case allowance?

A. Yes, and we just had a permanent setup as far as the agreement went.

1887 Q. On the round package salt?

A. That is right.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: I would like to inquire, are you buying any other products from Thomas & Howard?

The Witness: At the present time?

Trial Examiner Purcell: Yes.

The Witness: Yes, sir.

Trial Examiner Purcell: Had you been purchasing from Thomas & Howard at the time you switched over to them on your salt business?

The Witness: Yes.

Trial Examiner Purcell: How are you billed? You say you order in 25 case lots. Are you billed on the basis of

25 cases, or are you billed as you withdraw in five case lots?

The Witness: We are billed as we withdraw in five case lots.

Trial Examiner Purcell: In five case lots?

The Witness: Yes.

Trial Examiner Purcell: All right.

Recross Examination by Mr. McBride.

Q. Mr. Hoffman, one other question: Have you at all times during the past several years been buying some
1888 of your other commodities from Thomas & Howard other than salt?

A. Yes, sir.

Q. Has your volume of purchases on the other commodities remained the same, or about the same, so far as Thomas & Howard is concerned?

A. About the same, yes.

Mr. McBride: That is all.

Mr. Haslett: That is all, sir, thank you very much for coming.

(Witness excused.)

Mr. Haslett: I will call as my next witness Mr. H. D. Smith.

HARRY DAVID SMITH was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Smith, will you state your full name for the record, please, sir.

A. Harry David Smith.

Q. Where do you reside, sir?

A. Augusta, Georgia.

Q. What business are you in, sir?

A. Wholesale grocery business.

1889 Q. And with what company are you connected, sir?

A. Smith Brothers Company.

Q. And is that located in Columbia?

A. Yes, 922 Walker Street.

Q. And you are here in response to a subpoena duly served upon you by the Federal Trade Commission?

A. Yes, sir.

Q. Is Smith Brothers Company a corporation?

A. Yes, sir.

Q. Incorporated under the laws of what state, sir?

A. Georgia, in 1914.

Q. And what position do you hold with the company?

A. President.

Q. President of the company?

A. Yes.

Q. Would you state geographically what territory is covered by your warehouse in Augusta, sir?

A. You mean the size of the warehouse, sir?

Q. No, I mean does it cover a radius of 50 miles or 40 miles?

A. Oh, you mean your trade territory?

Q. Yes.

A. We work only the city trade at the present time.

Q. Only the city trade of August, Georgia?

A. Yes.

1890 Q. Does your company have any competitors?

A. Yes.

Q. Would you name some of them for us, sir?

A. Well, we have C. D. Kenny, Thomas & Howard, Augusta Grocery Company, Southern Grocery Company, McElmurray & Company, Chandler & Company.

Q. And these various competitors sell groceries and allied products to the retailer trade in and around Augusta, Georgia?

A. Yes, sir.

Q. And the business of Smith Brothers is to sell groceries and allied products to the retailer trade in and around August, Georgia?

A. That is correct.

Q. Does your company handle salt?

A. Yes, sir.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. Do you know what types of salt your company purchases from the Morton Salt Company?

A. About the only salt we purchase now is the round package salt.

Q. That is, the blue label free running and iodized salt?
A. Yes.
Q. Do you know the price at which your company pays for that salt per case?
1891 A. Yes.
Q. What is that price, please, sir?
A. $1.50 per case.
Q. And what do you resell it for to your customers?
A. Our price is $1.65.
Q. $1.65 a case?
A. Yes.
Q. Do you know approximately the number of cases of round package salt that your company purchases per year, approximately, sir?
A. Well, it would run from 175 to 200 cases.
Q. From 175 to 200 cases a year?
A. Yes.
Q. How are your orders placed with the Morton Salt Company for your requirements of round package salt?
A. Twenty-five to fifty cases.
Q. I mean, does the salesman call upon you, sir?
A. Yes, sir.
Q. The salesman from the Morton Salt Company?
A. Yes, sir.
Q. And do they also have a broker?
A. Yes, the M. Williams & Company is their broker.
Q. In Augusta?
A. Yes.
Q. What is the name of the salesman, sir?
1892 A. The salesman working the territory is Mr. Roquemore.
Q. And both the salesman and broker call upon you soliciting your business for the Morton Salt Company?
A. You mean, do they come together?
Q. No, separately.
A. Oh, yes.
Q. And as a result of which, commodities are shipped to you from the various plants of the Morton Salt Company direct to your place of business in Augusta, Georgia?
A. They usually come in pool cars and we have to pick them up.
Q. They come in pool cars?
A. Yes, sir.

Q. And where is the car placed when it arrives in Augusta?

A. Well, I don't know where the last pool car was placed. I imagine it was placed in the broker's warehouse and we hauled it from there.

Q. Do you haul it at your own expense?

A. Yes.

Q. In your own trucks?

A. Yes, sir.

Q. Does your company receive any discounts or allowances of any kind from the Morton Salt Company?

A. No, sir.

Q. Did you know that the Morton Salt Company
1893 does grant discounts and allowances to some of their customers?

A. I don't know that they do. The only evidence we have that something might be wrong along that line is that we don't sell much salt. We are out of competition on salt.

Mr. McBride: If the Examiner, please, I will ask that the answer be stricken as not responsive to the question, except the first phrase of it. He either knows or he doesn't know in answer to counsel's question.

Mr. Haslett: I think the answer is responsive. The witness is entitled to make an explanation of his answer.

Trial Examiner Purcell: He is not making an explanation, sir, he is making a deduction. I will sustain the objection.

Mr. Haslett: What part stands and what doesn't stand?

Trial Examiner Purcell: Strike out all after "I don't know that they do."

By Mr. Haslett:

Q. Do you know whether or not your company has ever lost any salt business to C. D. Kenny or Thomas & Howard Company, due to the fact that Thomas & Howard and C. D. Kenny quote lower prices than the price which you are charging for your round package salt?

A. Yes, we have lost salt business on account of lower prices.

1894 Q. On the round package salt?

A. No, sir, not on the round package salt, mostly on the square package.

Q. Did you at one time purchase square package salt from the Morton Salt Company?

A. Yes, sir.
Q. Was that the Kleer salt?
A. Yes, sir.
Q. Do you know approximately what you paid per case for it, sir?
A. Well, I don't remember, because it has been a long time since we bought any from them.
Q. Did their prices vary any?
A. Yes, they would change.
Q. They would go up and down quite often?
A. Yes, sir.
Q. You say you have lost business to Thomas & Howard and C. D. Kenny on the square package salt?
A. Yes.
Q. Do you know whether or not you have lost any business on the round package salt?
A. Well, as I say, we don't sell any, much.
Q. Of the round package salt?
A. No, sir.
Q. Do you know the price at which C. D. Kenny 1895 and Thomas & Howard are now offering the round package salt to the trade, in Augusta, Georgia?
A. No, sir.
Q. You don't know?
A. No, sir.
Q. What effect would it have upon your business if Thomas & Howard would offer the salt at $1.60 per case, while at the same time you were selling it at $1.65 per case?
A. It wouldn't have any effect much, because we would meet that price.
Q. You would lower your price?
A. Yes.
Q. To meet it?
A. We wouldn't lose the busines on a margin of 5-cents difference.
Q. You would lower your price to meet it?
A. Yes, sir.
Q. And if you didn't lower your price to meet it, what would happen?
A. Well, we don't sell many big volume buyers, as it is, so we wouldn't lose much salt business.
Q. You would lose that busine s, though?
A. We would lose some of that usiness, yes.
Q. If the price was $1.50 a case quoted by either C. D.

Kenny or Thomas & Howard, would your company
1896 lower its price to meet that price?

A. No, sir.

Q. You would let that business go?

A. Yes, sir.

Q. You would lose that business?

A. Yes, sir.

Q. What effect would it have on your business at the time you were purchasing this square package salt, 36/1½'s, if Thomas & Howard had sold it at 5-cents per case under the price that you were charging for that particular grade of salt?

A. We wouldn't get any of the quantity business.

Q. You wouldn't get any of it?

A. No, sir.

Q. What effect does it have on your business, the fact that Thomas & Howard and C. D. Kenny pays $1.40 for a case of round package salt, while at the same time your company pays $1.50 a case for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Well, it would just eliminate us from that type of business, probably.

By Mr. Haslett:

Q. It would have an adverse effect upon your business?

A. Yes.

1897 Q. Do you purchase salt from other processors of salt, other than the Morton Salt Company?

A. Yes, sir.

Q. Would you name some of those processors, sir?

A. Carey Salt Company, Jefferson Island Salt Company, Mulkey Salt Company, Carey—I named that—International, and that is all I can recall at the present time.

Mr. Haslett: It is stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's exhibit No. 52, except as to the quantity of the product, date, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company, and Smith Brothers Company of Augusta, Georgia, who is a customer of respondent, Morton Salt Company, and that said Commission's exhibit No. 52 is typical of such invoices for the sale of salt of the same type that appears

thereon that pass between the respondent herein and its customer, Smith Brothers Company of Augusta, Georgia, and that such invoices have in the regular course of the respondent's business passed between the respondent and its said customer, Smith Brothers Company of Augusta, Georgia, since the respondent began the sale of and the said customer, Smith Brothers Company of Augusta, Georgia, began the purchase of the type of products
1898 as appear on Commission's exhibit No. 52.

Mr. McBride: That is correct.

By Mr. Haslett:

Q. Do you know the reason why your company ceased the purchase of the flat 5-cent salt from the Morton Salt Company?

A. No, sir, I couldn't give you that reason because my father at that time, at the time that letter was written, which you referred to a while ago, was president of the company. I have been president of the company since February, 1941.

Q. And your father was president prior to that time?

A. Yes, sir.

Q. Do you feel that your business on the round package free running and iodized salt would increase if you were given the same price at which C. D. Kenny and Thomas & Howard obtain from the Morton Salt Company?

A. Yes, I believe we would sell more.

Q. Do you do any promotional work in connection with the round package salt for the Morton Salt Company?

A. No, sir.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. How many salesmen do you have operating for your company, Mr. Smith?

1899 A. Only two.

Q. Do they work only the city of Augusta, Georgia?

A. Yes, sir.

Q. Do they handle the full line of commodities that your company handles, is that correct?

A. Yes, sir.

Q. Now, your $1.65 price on Morton's blue package has been in effect for several years, hasn't it?

A. Yes, sir.

Q. And I think you stated that as nearly as you could recall, the round package volume of your company has been about 175 to 200 cases a year, is that correct?

A. Yes, sir.

Q. That has been true for the past several years?

A. Well, yes, I would say so.

Q. As nearly as you can recall?

A. Yes.

Q. I think you stated that you believed you had lost some square package business to either C. D. Kenny Company or Thomas & Howard. Do you recall your statement correctly on that?

A. Yes, sir.

Q. Will you give me an incident of when that happened, if you can, identifying it as to time and customer?

A. Well, it has happened a number of places. It
1900 would be hard to figure out any specific instances, but the salt has been sold at a number of places at our cost, in 50 and 100 case lots, and we would lose that business.

Q. Let me inquire again. Do you know of any particular instances, Mr. Smith, when that has happened? If you do, I again ask that you identify it as to time and customer.

A. No, sir, I couldn't give you any specific instance.

Q. Can you recall the quantity of square packages involved in these instances that you recall you lost the business?

A. Well, anywhere from 25 to 100 cases.

Q. Do you recall the number of packages involved or the number of cases involved, if you don't recall the customer involved?

A. Well, I have numbers of customers that buy salt in those quantities, and I can't sell them salt.

Q. What salt are you offering to those customers that you just referred to?

A. You mean, what type of salt?

Q. That is right.

A. Well, Jefferson Island or Carey Salt, or any of the salt put up by competitive manufacturers of Morton.

Q. But it may or may not be Morton's square package, is that right?

A. Oh, no, sir, not necessarily.

Q. As I understand it, you don't sell Morton's square package at the present time?

1901 A. No, sir, not now.

Q. Now, when you lost this square package business, did you lose it at a time when you were or were not handling Morton's square package?

A. Well, we haven't sold any salt in several years to amount to anything. Our salt business has just gone. The last five or six years, we haven't sold any salt to amount to anything.

Mr. McBride: If the Examiner please, I will have to ask that the answer be stricken and that the question be read back. The answer is unresponsive to what I am trying to get at.

Trial Examiner Purcell: Let me have the question again, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. Motion to strike the answer is granted.

Mr. McBride: Now, Mr. Reporter, would you read the question back to the witness again, please?

(The question referred to was re-read by the reporter.)

The Witness: Well, we lost the bulk of our salt

1902 business. We were handling all brands of salt, including Morton salt.

By Mr. McBride:

Q. Now, when did that occur, again, Mr. Smith?

A. Well, I have said five or six years ago. We haven't sold any salt recently to amount to anything.

Q. But you can't remember any particular instance when you lost some of this business to C. D. Kenny and Thomas & Howard, is that right?

A. No, sir.

Q. You may have lost it to some other firm in Augusta, is that correct?

A. We could have, yes.

Q. So, you don't know for certain whether your salt business drifted away to Thomas & Howard, C. D. Kenny Company, or any of those other competitors that you named in Augusta, is that right?

A. Except I happen to know who sells the most salt there.

Q. But the mere fact that you believe you know who sells the most salt in Augusta establishes in your mind the fact that you must have lost business to those companies?

A. Well, I don't know just how to answer that question. I mean, I can't pick out any definite concern that I could figure I lost business to on account of that concern.

Q. Now, let me ask you this question, Mr. Smith:
1903 When you lost this square package business, do you know of your own knowledge that C. D. Kenny Company or Thomas & Howard sold to the retailer whose business you lost?

A. Do you mean, did they sell to the same concern that I sold it to at that time, when I lost that business?

Q. No, when you lost the business. We will say a particular retailer, you haven't been able to identify any retailers, so when you lose this business to retailer A in Augusta on square packages, do you know whether or not Thomas & Howard Company sold that particular retailer?

A. No, sir, I couldn't say that.

Q. And would your answer be the same on C. D. Kenny Company?

A. I wouldn't know of any definite sale. I couldn't point out any definite sale, therefore, I wouldn't know which one of those concerns sold the salt.

Q. And it may have been some other wholesale house in Augusta that sold the salt to this retailer A that we are talking about?

A. It could have been, possibly.

Q. And do you know whether or not in the cases you have your vague memories about, whether the salt that was sold to these retailers was Morton's square package salt or International's or Carey's, or whose it was?

A. No, sir, it could have been any of several brands.

1904 Q. And it may or may not have been Morton's square package?

A. That is right.

Q. Do you handle blocks, Mr. Smith?

A. Very few, for the reason that we don't work the country trade, and that is where the majority of block salt is sold.

Q. That has been true for several years?
A. Yes, sir.
Mr. McBride: I believe that is all, Mr. Examiner

Redirect Examination by Mr. Haslett.

Q. Mr. Smith, you stated your salt business had decreased in the last several years and dropped off practically to nothing?
A. Yes.
Q. Five or six years ago, was your business in the sale of salt an important item as compared to your whole business?
A. Well, in tonnage, it was a good item, but of course, salt is cheap, it doesn't run much, as far as money is concerned.
Q. And at the present time, it is practically nothing?
A. We don't sell but very little salt.
Q. Very little salt?
A. Yes, sir.
Q. And that has been a steady decline during the past five years?
1905 A. Yes, sir.
Q. To what do you attribute that decrease?
A. Well, today it is pricing, and my deduction is that it is on account of price.
Q. Someone else is now quoting a better price than you?
A. That is what I figure.
Mr. Haslett: I think that is all.
Mr. McBride: I have no further questions.
Mr. Haslett: Thank you very much, Mr. Smith.
(Witness excused.)
Trial Examiner Purcell: Call your next witness.
Mr. Haslett: May we have a five minute recess, Mr. Examiner?
Trial Examiner Purcell: Yes.
(A short recess was taken.)
Trial Examiner Purcell: Come to order, gentlemen.
Mr. Haslett: Come around Mr. Rawl.

JACOB B. RAWL was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Rawl, will you kindly state your full name for the record, sir?

1906 A. Jacob B. Rawl.

Q. And do you reside in Columbia, South Carolina?

A. Yes, sir.

Q. In what business are you engaged?

A. Wholesale grocery and feeds.

Q. And with what company are you connected, sir?

A. Rawl Distributing Company.

Q. And where is the Rawl Distributing Company located?

A. 1219 Gadsden Street.

Q. Columbia, South Carolina?

A. Columbia, yes.

Q. Is it a corporation?

A. Yes.

Q. Incorporated under the laws of what state, sir?

A. Of South Carolina.

Q. And what is it? Does your company sell groceries and allied products to the retailer stores?

A. Yes.

Q. And in addition to that, it handles feeds, also?

A. Yes.

Q. What territory is covered by your company in the sale of its commodities?

A. Just the city and the nearby territory.

Q. Within a radius of how many miles?

A. About 25 miles.

1907 Q. Within a radius of 25 miles?

A. Yes, sir.

Q. Does your company have any competitors?

A. Yes.

Q. Would you name some of them, please?

A. Thomas & Howard, Merchant's Wholesale, C. D. Kenny, Hartley Grocery Company, and Grocery Supply Company. That is about all the wholesale grocers. Of

course, we have the big chain stores, you know, like J. Drake Edens.

Q. Do you do any retail business at all, sir? Or just wholesale?

A. Just wholesale.

Q. Does your company handle salt?

A. Yes.

Q. Does it make any purchases of its salt requirements from the Morton Salt Company?

A. How is that, now?

Q. Do you make any purchases of your salt requirements from the Morton Salt Company?

A. Yes, sir.

Q. And what type of salt does your company purchase from the Morton Salt Company?

A. Well, all sizes and all grades, I might say.

Q. Do you purchase the round package blue label salt?

A. Yes, sir.

1908 Q. Do you purchase the Kleer brands?

A. Yes.

Q. Do you purchase any sack salt?

A. Yes, sir.

Q. And do you also purchase block salt?

A. Yes, sir.

Q. Sausage seasoning?

A. Sausage seasoning, yes.

Q. And Kleer fine salt and Kleer table salt?

A. Yes, sir.

Q. Smoke salt?

A. Yes, I have handled that.

Q. How are orders placed by your company for its requirements of Morton's salt?

A. Usually by the salesman and the broker.

Q. By the salesman and the broker?

A. And the broker.

Q. They both call upon you to solicit your orders for the Morton salt?

A. Yes.

Q. And you give them orders, as a result of which commodities are shipped to you by the Morton Salt Company?

A. Yes.

Q. Do you purchase in pool cars?

A. Yes.

1909 Q. And do you also purchase on a carload basis, full cars?

A. It is supposed to be on a carload basis, I think, in pool cars.

Q. You pay the same price where you have a pool car as you do when you buy a full car?

A. Yes, I think so.

Q. Do you ever purchase a full car?

A. I haven't from Morton, no.

Q. Do you know the price at which your company pays for its round package blue label salt from the Morton Salt Company?

A. Yes.

Q. What is that price?

A. $1.50 per case.

Q. Do you know approximately the number of cases that you buy during a 12 months' period from the Morton Salt Company of that particular salt?

A. It has been averaging 50 cases a year for the last two years.

Mr. Haslett: May we go off the record, Mr. Examiner?

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

1910 Q. What is the price at which your company resells the round package salt to the retailer customers for?

A. Sixty-five cents and seventy-cents, not over seventy, not less than sixty-five.

Q. I am talking about the round package salt that you pay $1.50 per case for, how much do you sell that to your retailer customers for?

A. I meant $1.65 and $1.70 per case.

Q. Why do you sell it at $1.65?

A. Well, just according to how a man pays his bills. If he is good pay, why, naturally sometimes I maybe shave it a little bit.

Q. I see.

A. Or, if it is a cash customer, or something like that, I maybe shave it a little bit.

Q. And the $1.70 price?

A. That is my regular price, it is the maximum price.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. No, sir.

Q. You don't?

A. No, sir.

Q. I believe you stated you are in competition with the C. D. Kenny Company?

A. Yes, sir.

1911 Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's Exhibit No. 148?

(The document referred to was marked "Commission's Exhibit 148" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 148 is a true and correct photostat copy of an invoice passing between the Morton Salt Company and the Rawl Distributing Company under date of January 26, 1940, and numbered 58278?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's Exhibit No. 148.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 148" was received in evidence.)

Mr. Haslett: I believe that is all.

Mr. McBride: I have no questions, Mr. Examiner.

Mr. Haslett: Thank you very much, Mr. Rawl, for coming.

1912 (Witness excused.)

Mr. McBride: I will request the Examiner at this time for permission to withdraw Commission's Exhibit 148 to be photostated, and the original thereafter to be returned to the record.

Trial Examiner Purcell: Permission granted.

1925

U. S. Court Room,
Post Office Building,
Charlotte, North Carolina,
Monday, May 25, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Illinois, for the respondent.

1926 Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 149.

(The document referred to was marked "Commission's Exhibit 149" for identification.)

1927 Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as 150.

(The document referred to was marked "Commission's Exhibit 150" for identification.)

Mr. Haslett: I hand the reporter another document and ask that it be marked for identification as Commission's Exhibit No. 151.

(The document referred to was marked "Commission's Exhibit 151" for identification.)

Mr. Haslett: I hand the reporter another document and ask that it be marked for identification as Commission's Exhibit No. 152.

(The document referred to was marked "Commission's Exhibit 152" for identification.)

Mr. Haslett: And this document, I ask that it be marked for identification as Commission's Exhibit No. 153.

(The document referred to was marked "Commission's Exhibit 153" for identification.)

Mr. Haslett: And this document, I ask be marked for identification as Commission's Exhibit No. 154.

(The document referred to was marked "Commission's Exhibit 154" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 149 is a price list on rock salt, list
1928 No. 30, dated September 22, 1936, for the state of Indiana?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document into evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's Exhibit No. 149.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 149" was received in evidence.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit 150 is a salt scale A-5, superseding scale A-4, dated March 22, 1937, and represents the price at which salt is sold in the states that appear on the cover thereof?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document into evidence, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 150.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 150" was
1929 received in evidence.)

Mr. Haslett: Is it stipulated, Mr. McBride, that the document marked for identification as Commission's Exhibit No. 151 is a scale of salt prices, scale C-5, superseding scale C-4, dated March 22, 1937, representing the price at which salt is sold in the states that appear on the cover thereof?

Mr. McBride: That is correct.

Mr. Haslett: I offer this document into evidence, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 151.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 151" was received in evidence.)

Mr. Haslett: Is it stipulated, Mr. McBride, that the document marked for identification as Commission's Exhibit No. 152 is a scale of salt prices, scale M-2, cancelling scale M-1, dated June 27, 1936, showing the prices at which salt is sold in the states that are listed on the cover thereof, including the penciled notations?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

1930 Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 152.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 152" was received in evidence.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 153 is a scale of salt prices, scale O-4, superseding scale O-3, dated July 1, 1936, showing the prices at which salt is sold in the states that appear on the cover thereof?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document into evidence.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 153.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 153" was received in evidence.)

Mr. Haslett: Mr. McBride, am I correct when I

1931 state that the document marked for identification as Commission's Exhibit No. 154 is a scale of salt prices, designated as C-3, dated July 3, 1936, superseding scale C-2 for the state of Texas?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection,

the instrument described will be received in evidence and marked Commission's Exhibit No. 154.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 154" was received in evidence.)

Mr. Haslett: Mr. McBride, am I correct when I state that the supplement attached to the exhibit, beginning with Commission's Exhibit No. 149 to Commission's Exhibit 154, are part of each of the exhibits that are attached thereto?

Mr. McBride: That is correct.

Mr. Haslett: I will call as my first witness, please, Mr. W. D. Flintom.

W. D. FLINTOM was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

1932 *Direct Eamination by Mr. Haslett.*

Q. Will you kindly state your full name for the record, Mr. Flintom?
A. W. D. Flintom.
Q. And do you reside in Charlotte, North Carolina?
A. Yes, sir.
Q. And in what business are you engaged, sir?
A. Wholesale grocery business.
Q. With what company are you connected, sir?
A. Thomas & Howard Company.
Q. Is that a corporation?
A. It is.
Q. Incorporated under the laws of what state?
A. North Carolina.
Q. Where is the principal office of that company?
A. At Charlotte.
Q. Does it have any branches?
A. Yes.
Q. Where are they located?
A. Salisbury and Rocky Mount.
Q. They are the only two branches?
A. Yes.
Q. And then it has a warehouse in Charlotte?
A. Yes.

1933 Q. Could you state approximately when the Thomas & Howard Corporation here in Charlotte was formed?

A. In March, 1924.

Q. March, 1924?

A. Yes.

Q. Have you been associated with it since that time, sir?

A. Yes, sir.

Q. What position do you hold with it?

A. Secretary and treasurer.

Q. Do you have under your jurisdiction the purchasing of salt and other products resold by your company to retailers?

A. Yes, sir.

Q. Your company is in the wholesale grocery business?

A. Yes, sir.

Q. And it sells groceries and allied products to the retailer customers?

A. To the retail grocery stores.

Q. I see, they are your customers, aren't they?

A. Yes.

Q. And would you state geographically what territory is covered by the warehouse here in Charlotte?

A. We cover a radius of approximately 40 miles, excepting east of here, and going to the east we cover approximately 150 miles.

Q. 150 miles east, but the rest within a radius of
1934 40 miles?

A. Approximately 40 miles, yes.

Q. Would you state the territory covered by each of your branches within the radius of how many miles?

A. The Salisbury radius would be approximately the same, except they go further to the east.

Q. They go further to the east?

A. Yes.

Q. Could you state approximately how many miles east they go?

A. I would say they go east now approximately 70 miles.

Q. Seventy miles?

A. Yes.

Q. And how about the other branch?

A. The other branch covers a radius of approximately 60 miles.

Q. And where is that located, sir?
A. Rocky Mount, North Carolina.
Q. Does it go into the state of Virginia?
A. No.
Q. All within the state of North Carolina?
A. Yes.
Q. Are any of the commodities purchased by your company for resale, sold in states other than the state of North Carolina?
A. Out of Charlotte we cross the line.
Q. You do cross the line, into what state, sir?
1935 A. Into South Carolina with, oh, I would estimate one or two per cent of our sales; just a very small percent.
Q. About one or two per cent of your sales are sold in South Carolina?
A. I would estimate approximately that.
Q. Has the Thomas & Howard Company any competitors?
A. Yes.
Q. Would you name some of them, please, sir?
A. Charles Moody Company.
Q. Is Charles Moody Company located in Charlotte?
A. Yes, sir.
Q. Just name the ones in Charlotte for the present, sir.
A. C. D. Kenny Company, L. W. Petrie; now, they are the leading competitors in Charlotte.
Q. Do you have any competitors out of each of the branches?
A. Yes.
Q. Could you name some of those, please, sir?
A. Peeler Grocery Company, Salisbury, I think that is the only one in the town of Salisbury, sir. They have others in the territory.
Q. How about Rocky Mount?
A. Rocky Mount has Edwards & Company in Rocky Mount. That is not exactly the style of the firm, but the name is Edwards. There is a firm by the name of Weeks in Rocky Mount.
Q. Have you a firm there by the name of Bass-Knight?
1936 A. No. There is a firm, I think, approximately 60 miles east of Rocky Mount named Bass-Knight.
Q. Are they competitors of Thomas & Howard?
A. They are in part of the territory, yes.

Q. But in all of the territory where you market your products, why, you have competitors selling groceries and allied products in competition with Thomas & Howard?

A. Yes, sir, there are other jobbers in the territory other than those I have named through the territory.

Q. I see. Does your company purchase or handle salt?

A. Yes.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes.

Q. How are orders placed by your company with the Morton Salt Company for its requirements of salt?

A. Placed with their representative, either their direct representative or their broker.

Q. The broker calls upon you, and the representative, also, sir?

A. Yes.

Q. And solicits orders for Morton's various brands of salt?

A. Yes.

Q. As a result of which, the salt is shipped to you in carload lots or less than carload lots, to your warehouse there in Charlotte, and also to your branches?

1937 A. Yes, sir.

Q. Does the Charlotte office do the purchasing for the other two branches?

A. No.

Q. They act separately from the Charlotte office?

A. Yes.

Q. And they place orders directly with the Morton Salt Company, also, sir?

A. Yes, in the same manner that we do.

Q. In the same manner?

A. Yes.

Q. And the commodities are shipped directly from the Morton Salt Company to the branches?

A. Yes.

Q. Does the Thomas & Howard Company here in Charlotte purchase on a carload basis, a full car at a time from the Morton Salt Company?

A. Not usually.

Q. They come in pool cars?

A. Yes, sir.

Q. That is, where the commodity is shipped in cars with other competitors' requirements, is that correct, sir?

A. I would assume. I don't know. We get it usually from the broker's warehouse when we buy in less than cars, and I don't know what else comes in the cars,
1938 but we get it in less than carloads and it is distributed from their broker's warehouse.

Q. You buy it from the Morton Salt Company at their broker's warehouse?

A. Yes.

Q. Do you pay the same price for it when you buy it from the warehouse as you do when you make your purchases direct from the Morton Salt Company in Chicago?

A. Yes.

Q. The same price?

A. Yes, sir.

Q. No difference on price on any grades?

A. No, no difference.

Q. Does the Thomas & Howard Company send its own trucks to the warehouse and haul the product to Thomas & Howard's warehouse?

A. Yes.

Q. And you are not compensated in any way by Morton Salt Company for that service, are you?

A. No, sir.

Q. The cost of that is borne by the Thomas & Howard Corporation?

A. Yes, sir.

Q. What type of salt does your company purchase from the Morton Salt Company?

1939 A. The Morton round package principally.

Q. Is that the blue label salt?

A. Yes, sir.

Q. Both free running and iodized?

A. Yes.

Q. Do you handle any of the square package?

A. Yes, what is commonly known as the 5-cent package, it is a square package.

Q. Do you handle any sausage seasoning from the Morton Salt Company?

A. Yes.

Q. How about sugar cure salt, smoke salt?

A. Yes.

Q. Do you handle any of the kosher salt?

A. Yes.

Q. And the Triangle table salt?

A. The Triangle table is what I referred to as the 5-cent salt.

Q. As the 5-cent salt?

A. Yes.

Q. What is the price at which Thomas & Howard charges its customers for the round package salt per case?

A. $1.60.

Q. $1.60 a case?

A. Yes, sir.

1940 Q. Has that price been in effect for a long time, sir?

A. Yes.

Q. Has it ever been any lower than that, $1.60?

A. I don't know. As I recall it, there hasn't been a lower price for quite some time. I am not sure about the price. As I recall the price a few years ago, it was for a different sized package, and at a higher price, but a different weight package. That goes back for a few years ago, but for this size package, it has been in effect for a few years.

Q. It has been $1.60 for the past several years?

A. Yes.

Q. Do you know of any occasion where Thomas & Howard has sold it for less than $1.60?

A. I don't know of any.

Q. Is that same price in effect at the various branches of the Thomas & Howard Company, the one in Rocky Mount and the other in Salisbury, North Carolina?

A. I think so.

Q. The same price?

A. Yes.

Q. What is the price that Thomas & Howard Corporation pays the Morton Salt Company for that round package salt per case?

A. We pay $1.50 per case, and we receive 10 cents per case quantity allowance, quarterly.

Q. You get that every quarter?

1941 A. Yes.

Q. Do you get any discount from the Morton Salt Company on the Triangle table salt?

A. There was a 5-cent a case discount in effect, but I am not sure whether it is still in effect or not.

Q. How did you receive your discount on the Triangle table salt when it was in effect, if you remember, sir? Did it come by credit memorandum, or by check?

A. I think there was a 5-cent off the face of the invoice. I am not sure that we received anything in addition, except on the invoice of 5-cents.

Q. But you say—

A. But we did receive the 10-cents on the round carton.

Q. And how long have you been receiving that discount, sir?

A. For quite some time.

Q. Quite some time?

A. Yes.

Q. And you say you get it every three months?

A. Yes, I think that is correct. It is quarterly that it is sent to us.

Q. And do you know approximately the number of cases that Thomas & Howard at Charlotte purchases from the Morton Salt Company on a yearly basis?

A. I don't know.

Q. Does Thomas & Howard—

1942 A. I started to say, I haven't checked that, and I don't really know the quantity.

Q. Does Thomas & Howard's Charlotte corporation purchase from the Morton Salt Company 5,000 cases of Morton's free running salt during a 12 consecutive months' period?

A. I hardly think so, sir. I don't see the records of the Rocky Mount and Salisbury places. They are kept at Rocky Mount, and I am guessing now, sir. I am sorry, I don't know, but those invoices, those orders are placed direct at those warehouses and invoices received there and paid, and I haven't had occasion to check that. I really don't know that answer.

Mr. McBride: Mr. Examiner, for the purpose of the record, I will stipulate that so far as the records of the Morton Salt Company are concerned, Thomas & Howard Company of Charlotte, North Carolina, does not purchase 5,000 cases of Morton's blue package in any 12 consecutive months' period, but purchases less than that amount.

By Mr. Haslett:

Q. Do you know, Mr. Flintom, whether or not the Thomas & Howard Company at Charlotte purchases $50,000 worth of salt a year from all sources of all processors of salt?

A. You are speaking of the Charlotte corporation?

Q. Yes.

A. I would say no. I would like to state again, that

in my hesitating, I haven't reviewed these records,
1943 and I am testifying to the best of my knowledge with the information that I have, and I would say no.

Q. How do you receive the discount on the round package salt from the Morton Salt Company? In what method and manner is it paid to your company here in Charlotte?

A. The 10-cents a case is paid from the Thomas & Howard Company, Columbia.

Q. The orders for your requirements of Morton's salt are not placed through the Columbia office of Thomas & Howard, are they?

A. No.

Q. They are placed direct with the representatives of the Morton Salt Company?

A. Yes.

Q. And commodities are shipped to you direct?

A. Yes.

Q. The only thing that you receive through the Columbia office is your discount?

A. Yes.

Q. And you say you receive that every three months?

A. Yes, sir.

Q. Does it come to you in the form of a check?

A. Yes.

Q. What do you do with it when you get it?

A. I credit it to merchandise purchases.

1944 Q. Have you a special account in your bookkeeping setup that shows your allowances that you receive from the various processors?

A. We just credit it right on the cash book to merchandise purchases. When we—what we do is deduct it from the merchandise purchase account.

Q. And then you put it in the bank and use it in the general course of your business?

A. Yes.

Q. Mr. Flintom, what effect would it have on your business if one of your competitors sold Morton's round package salt at $1.55 a case, while at the same time you were selling it at $1.60 a case?

A. It would reduce our profit 5-cents.

Q. Reduce your profit 5-cents?

A. I mean, we would have to meet that price and it would reduce our profit 5-cents.

Q. You would either have to meet it or lose the business, is that correct?

A. A large part of it.

Q. Would your business in any way be affected by the fact that a competitor of yours was purchasing Morton's salt at $1.35 a case, while at the same time you were paying $1.40 for it, sir?

Mr. McBride: My usual objection.

1945 Trial Examiner Purcell: Objection overruled.

The Witness: Will you state the question again?

By Mr. Haslett:

Q. Would your business be in any way affected if one of your competitors was purchasing Morton's round package salt at $1.35 a case, while at the same time you were paying $1.40 a case for it, sir?

A. It would not be, if he sold it at a lower price than our selling price. His cost would not affect our business, but his selling price would determine that.

Q. The price at which your company, then, pays for its various requirements is not an important factor in your business, is that right?

A. Yes, it is an important factor in our profits.

Q. So, the price which you pay for salt would be an important factor in your salt business, wouldn't it, sir?

A. Yes.

Q. And if someone were purchasing it at a lower price than you, why, that would have some bearing upon the margin of profit which you were receiving in comparison with the margin of profit which he was receiving, wouldn't it, sir?

A. Which he was receiving?

Q. Yes.

A. Yes, sir.

Q. So, his would be greater, and he would be in a

1946 more favorable position?

A. Yes, he would be.

Q. Has there been an occasion when your company has purchased salt from the Morton Salt Company on a carload basis?

A. Yes.

Q. Did you get the carload price at that time?

A. Well, may I state that I don't recall having purchased the round package on a carload basis, in a straight carload.

Q. It would be with other commodities?

A. But we have purchased Morton's salt on a carload basis.

Q. When you purchase Morton's salt on a carload basis, which car was composed of various grades of salt processed and sold by the Morton Salt Company, did your company pay the regular carload price for it, sir?

A. The very same price that we have been discussing.

Q. You don't know whether you received any special discount on a carload basis?

A. I don't know. There was no difference in the blue package, I am sure, they are bought either way. The other package varies. The other salt varies a great deal in price. It has for the past several years, and it has fluctuated a great deal, and I know we have bought Morton's and other salt at various prices.

Q. But when you do purchase from the Morton Salt Company on a carload basis, you pay the carload price, is

1947 that correct, sir?

A. So far as I know.

Q. Do you know the reason for the variance in prices of the other types of salt other than the round package salt that are processed by the Morton Salt Company?

A. No, it is a highly competitive item, and the price fluctuates much more than the round package. The round package does not fluctuate.

Q. What do you mean by "highly competitive," sir?

A. Well, I mean that it is sold on a very short margin of profit, and it is just an item that varies a good deal, depending both on the margin of profit made and on the price paid, ever since during the fall season. Some retailers will buy a carload of salt at times. Sometimes they will buy a part carload of salt, and those orders are handled on short margins and the prices fluctuate a great deal more than the regular round package.

Q. Mr. Flintom, do you know the price at which your company is now charging for the 5-cent salt processed by the Morton Salt Company, known as table salt, Triangle table salt?

A. We were not long since getting 95-cents.

Q. Per case?

A. Ninety-five cents per case.

Q. Do you know the price which your company is paying for it, sir?

1948 A. I don't know what we are paying recently. There was an advance a few months ago, I don't recall. I think we are now getting it for around $1.00 or $1.05 a case, but we were getting 95-cents a short time ago.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 155.

(The document referred to was marked "Commission's Exhibit 155" for identification.)

The Witness: I would like to say that the 5-cent salt business by us, and I think by most of the jobbers, the 5-cent salt by us was purchased during the fall and the price was not as high as the present price, and we had big stocks carried over which set the price. I haven't seen what you have, but I have an idea that there were small fill-in orders for only small quantities, sir, which wouldn't affect the general price of our 5-cent salt, due to having large stocks at an average low cost.

Mr. Haslett: I see. Mr. McBride, am I correct when I say that it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit No. 155 is a true and correct invoice of the Morton Salt Company, numbered 85803, directed to the Thomas & Howard Company, of Charlotte, North Carolina, under date of December 11, 1941?

1949 Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's exhibit No. 155.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 155" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's exhibit No. 156.

(The document referred to was marked "Commission's Exhibit 156" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say it is stipulated between counsel representing the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit No. 156 is an invoice passing between the Morton Salt Company and the Thomas & Howard Company of Charlotte, North Carolina, numbered 91559, under date of January 13, 1942?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection,
1950 the document described will be received in evidence and marked Commission's exhibit 156.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 156" was received in evidence.)

By Mr. Haslett:

Q. Mr. Flintom, I hand you what is now in evidence as Commission's exhibit No. 155, and ask you to state whether or not that document represents a typical invoice passing between the Morton Salt Company and Thomas & Howard Company, Charlotte, North Carolina, for the type of commodities that are shown thereon, sir?

A. Yes.

Q. And I hand you Commission's exhibit No. 156, and ask you to state whether that document represents a typical invoice passing between the Morton Salt Company and Thomas & Howard Company of Charlotte, North Carolina, for the type of commodities shown thereon?

A. Yes.

Q. Does your company do any promotional or advertising work in connection with the resale of Morton's salt to your customers?

A. Yes, we have done some promotional work on the round cartons, by having the salesmen carry a carton with them for promoting distribution.

1951 Q. Does the Morton Salt Company compensate the Thomas & Howard Company for that service?

A. No, not unless it is included in this 10-cents, no other compensation.

Q. As far as you know, the 10-cents is a so-called quantity discount, is that correct?

A. Yes, although we have been asked to promote the distribution of that brand and keep it in as many stores as possible, and we have had our men carry a round carton to increase the distribution.

Q. Who asked you to do that, sir?

A. We have had the Morton Salt representative to ask us to do it.

Q. Do you know the names of any of them that asked you to promote the sale and carry the package, the round carton, around with them, sir?

A. I am now going back to memory over a period of time, but I feel sure that I am correct in saying that Mr. Charlie Flynn has asked me, for one, on his visits here.

Q. And he is connected with the Morton Salt Company?

A. Yes.

Q. And at his request, you carried a carton of Morton's salt around with you to promote the sale of it through your retailer customers to the consumer?

A. Yes.

1952 Q. Is that the only type of promotional work you have done, sir?

A. I think so.

Q. Do you do any advertising for the Morton Salt Company?

A. No.

Q. Do you publish any price lists?

A. No, none other than the price list in our salesman's order book, which he carries around and frequently turns to the order book for Morton's prices, that is the only price list we publish.

Q. Has the sale of Morton's round package salt by you to your customers increased within the past five years?

A. Yes, I think so.

Q. Substantially?

A. Yes.

Mr. Haslett: I think that is all, Mr. Flintom.

Cross-Examination by Mr. McBride.

Q. Mr. Flintom, I think you testified that at the request of some of the representatives of the Morton Salt Company, your salesmen carried packages of the blue can around and endeavored to promote the sale of Morton's blue package salt?

A. Yes, we have.

Q. As far as you recall, that request was never made as part of any arrangement or agreement or condition

1953 to the receiving of the 10-cent quantity discount on the blue package, was it?

A. I don't know that it was.

Q. It was just part of the general sales promotional program of the Morton Salt Company?

A. Probably so, sir. I don't recall that it was tied in in this connection, but we have carried that at the request of your representative.

Q. You received like requests, I suppose, from other producers of other types in an effort to increase the sale of various products through your company, is that right?

A. Yes.

Q. And it would be the same sort of a general request by any other producer that you are referring to?

A. Yes, sir.

Mr. McBride: That is all, Mr. Examiner.

Redirect Examination by Mr. Haslett.

Q. Mr. Flintom, do you sell any of the Morton's products to your competitors, to other wholesalers?

A. We do not regularly. They may pick up that item when they run out, or an occasional fill-in order to fill their order, just as we do them on other items, and as they do us on other items. There is no sale unless it is an accomodation sale.

1954 Q. It would be sporadic?

A. Yes, and it would be just as is commonly done between us on other items.

Q. I believe you named C. D. Kenny Company—

A. Yes.

Q. —as one of your competitors?

A. Yes.

Q. Do you, in any of the territory served from the warehouse of Thomas & Howard here at Charlotte, encounter the competition of the Thomas & Howard Corporation at Columbia?

A. No. You say do we work in competition with them?

Q. That is right.

A. No.

Q. What is it, a segregation of territory?

A. Yes, our territories don't meet.

Q. Is that by agreement with the other corporation?

A. No, we just don't work that far.

Q. There is no connection between your company, no corporate connection between your Thomas & Howard Corporation and the Thomas & Howard Corporation at Columbia, South Carolina, is there, sir?

A. There is some common stock ownership, if that is what you mean.

Q. But they are separate corporations?

A. Yes, sir.

1955 Q. Are you an officer of the Columbia Corporation?
A. No, sir.
Q. The sales policy of the branch is controlled and managed by the managers of each branch or through the main office here in Charlotte?
A. By the manager of each branch, and with some assistance and supervision of some of the stores here. I don't have any supervision of Columbia and the stores there.
Q. I am talking about just your branches, just the branches connected with your corporation.
A. Now, what was the question?
Q. Whether they are controlled by the local managers of those branches in Salisbury and Rocky Mount, or whether they are controlled through the main office here in Charlotte?
A. Well, they are directed out of those branches, sir, but I meet with them and visit with the managers and discuss the problems that they have, and advise with them, but they are mainly sales policies directed out of those branch warehouses.
Q. You have nothing to do with the Columbia corporation of Thomas & Howard?
A. No, sir.
Q. You don't direct the sales policies of that corporation, do you, sir?
A. No, sir.
1956 Q. And the same would be true of the Greenville corporation?
A. The same would be true.
Q. You have nothing to do with any of the Thomas & Howard corporations, except the one here in Charlotte?
A. Yes, I have something to do with the one at Hickory. I have nothing to do with the South Carolina corporations.
Q. Is the one at Hickory a corporation, sir?
A. Yes, sir.
Q. What position do you hold with that corporation?
A. I am vice-president.
Q. And do you have the management and control of that corporation under your supervision?
A. Well, I advise with him.
Q. With him, who is the manager of it, sir?
A. Mr. Furr.
Q. And is he also an officer?

A. Yes.

Q. And is that the only one in which you have a control over the operating policies of the corporation, the one at Hickory?

A. Yes.

Q. And all of the other Thomas & Howard Corporations are separate and distinct corporations with which you have nothing to do?

A. They are separate and apart from those that I
1957 have to do with.

Mr. Haslett: I think that is all.

Trial Examiner Purcell: Mr. Flintom, I don't recall whether you testified to it or not, but are the managers of your Salisbury and Rocky Mount branches employees, or are they officers and stockholders of your corporation?

The Witness: The one at Salisbury is an officer and stockholder. The Rocky Mount manager is not.

By Mr. Haslett:

Q. What position does he hold with the corporation?

A. He doesn't hold any position in the corporation. He is not an officer of the corporation.

Q. He is not, sir?

A. No.

Q. So, you want to correct your testimony when you say he is an officer? He is an employee of the corporation and also a stockholder?

A. He is not a stockholder or an officer in the corporation at Rocky Mount.

Q. How about the one at Salisbury?

A. He is both a stockholder and officer.

Q. What position does he hold?

A. He is vice-president.

Q. He is vice-president?

A. Yes.

1958 Q. Of the Charlotte corporation?

A. Yes.

Q. And he is also a stockholder in the Charlotte corporation?

A. That is right.

Q. He hasn't anything to do with the other corporations operating under the trade name of Thomas & Howard?

A. No.

Mr. Haslett: I think that is all.

Recross Examination by Mr. McBride.

Q. Mr. Flintom, do you ever consult with Mr. J. E. Timberlake?

A. Yes.

Q. With respect to the general grocery business, and general wholesale operations?

A. Yes, sir.

Q. And in the course of those consultations, does the question of your general operations here at Charlotte, and the two branch houses and Hickory, become the subject of that discussion?

A. Yes.

Q. So that from time to time Mr. Timberlake is apprised of your operations here, and you receive whatever mutual assistance and help you can out of those consultations, is that correct?

1959 A. Yes.

Mr. McBride: I think that is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Flintom, do you discuss with Mr. Timberlake the question of purchases of salt?

A. Yes, I have.

Q. Does Mr. Timberlake have anything to do with your corporation?

A. No, he has no stock and is not an officer.

Q. He has no stock in the Charlotte corporation, and he is not an officer of it, sir?

A. No.

Q. And what is the reason for the various discussions and conversations you have with him regarding your business? Is it because he knows something about the grocery business?

A. Yes, that is one reason, sir.

Q. What is the other reason, if any, sir?

A. Well, there is a common stock ownership through Mr. Boyce, I think. I think Mr. Boyce has stock in both.

Q. I believe Mr. Timberlake testified to that, but Mr. Timberlake has no stock in this corporation at all, has he?

A. No.

Q. And he is not an officer of it, sir?

A. No.

1960 Q. He has nothing to do with formulating the policies or practices of this corporation?

A. No, sir.

Mr. Haslett: That is all.

Mr. McBride: One final question.

Recross Examination by Mr. McBride.

Q. Mr. Flintom, isn't one of the primary purposes of your consultations with Mr. Timberlake, the desire of modeling the general operations of your Thomas & Howard Companies here and at Hickory, along the same general lines of the policies of the Thomas & Howard Companies at other points?

A. Yes, I would say that the policies are formed through our mutual assistance, one with the other.

Mr. McBride: That is all.

Redirect Examination by Mr. Haslett.

Q. Mr. Flintom, your policies here are no different from any other policies from a wholesale grocer? You sell groceries and allied products to the retailer, don't you?

A. Yes. I am not familiar with the policies of other grocers, though. I mean, I know in a general way, but I can't answer for the policies of other wholesale grocers.

Q. Are you familiar with the policies of the Timberlake Grocery Company of Thomasville, Georgia?

1961 A. Yes.

Q. How about the one at Macon?

A. Yes.

Q. Are you familiar with all of the policies and practices of the various corporations operating under the trade name of Thomas & Howard?

A. I know something of them, sir, but as to being familiar, I don't know as to what extent that would carry. I know something of them, but I am not an officer or a stockholder, and don't have access to their books.

Q. Your primary business is running your own corporation, isn't it?

A. Yes, sir.

Q. Minding your own affairs?

A. Yes.

Q. Do you know of any other arrangement whereby

your company receives discounts upon its purchases through the Columpia office of Thomas & Howard?

Mr. McBride: If the Examiner please, I will object to that question.

Trial Examiner Purcell: Off the record.

(Discussion was had off the record.)

Trial Examiner Purcell: On the record. Objection overruled. You may answer.

The Witness: What was the question?

1962 Trial Examiner Purcell: Read the last question, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Now, answer that, please, "yes" or "no", before you proceed.

The Witness: Yes.

By Mr. Haslett:

Q. What arrangement is there, sir?

Mr. McBride: Now, Mr. Examiner, I renew my objection. I see no point to the discount arrangements or anything else as having a bearing on this particular hearing, and I don't wish that to be confused with an objection to going into the general background of the business. That is not the purpose of this objection. I am simply directing my objection to questions specifically as to other discount arrangements, if any, with Columbia, or otherwise. It is simply inappropriate.

Trial Examiner Purcell: Unless it can be shown that the local company is a party to it, or profited by it.

Mr. McBride: Well, assume that to be true, I still don't know what bearing it has in this hearing.

Trial Examiner Purcell: In that event, I think it would be very material. However, I will hear from counsel for the Commission.

Mr. Haslett: Mr. Examiner, I think it is very
1968 relevant and material to the issues of this case to show whether or not there is any other arrangement by this company whereby it receives discounts and allowances through the Columbia organization. It has a lot of bearing upon the issues in this case, and I think it is a good question.

Trial Examiner Purcell: Objection will be overruled. You may have an exception.

The Witness: Your Honor, sir, I was just trying to recall. He asked me if I had knowledge of other arrange-

ments, and I do, but I don't recall of any now in effect, and before I could give an answer to what has been, I would like to—I think I would have to refresh my recollection on just how it was handled.

By Mr. Haslett:

Q. But you don't know of any at the present time, do you, sir?

A. I don't know of any that are now in effect.

Q. There might have been some in the past?

A. There has been some in effect, sir.

Q. In the past?

A. Yes, sir.

Q. But none in effect at the present time?

A. I don't know of any similar ones now in effect.

Mr. Haslett: I think that is all.

Mr. McBride: I have no further questions.

1964 (Witness excused.)

Trial Examiner Purcell: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over, gentlemen, proceed.

Mr. Haslett: I will call as my next witness, Mr. Moody.

G. D. MOODY was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Moody, will you please state your full name for the record?

A. G. D., George Duyall Moody.

Q. Do you reside in Charlotte, North Carolina?

A. Yes, sir.

Q. In what business are you engaged?

A. Wholesale grocery.

Q. And with what company are you connected, sir?

A. Charles Moody Company.

Q. Is that a corporation, sir?

A. Yes, sir.

1965 Q. Incorporated under the laws of what state, sir?

A. North Carolina.
Q. What position do you hold with the company?
A. President.
Q. You are president of the company?
A. Yes.
Q. Has the company any branches?
A. Three.
Q. Where are they located, sir?
A. Gastonia, Concord and Monroe.
Q. And Monroe?
A. Yes.
Q. All within the state of North Carolina?
A. Yes, sir.
Q. Do you do any business outside of the state of North Carolina?
A. We go into South Carolina.
Q. You do, sir?
A. Yes.
Q. What is the business of the Charles Moody Company?
A. Wholesale grocers.
Q. They sell groceries and allied products to the retailer grocery stores?
A. Yes.
Q. The main office of the organization is located 1966 in Charlotte?
A. Yes, sir.
Q. And your office is here, also?
A. Yes, sir.
Q. Would you know within what radius your company does business around Charlotte, how many miles?
A. Forty miles.
Q. And how about at Concord?
A. They will go about the same.
Q. And at Gastonia?
A. Well, he will go about 15 miles.
Q. What is the other branch?
A. Monroe, he will go probably 40 or 50 mi.
Q. He goes into South Carolina?
A. Yes.
Q. Does the Charles Moody Company have any competitors?
A. Yes, sir.
Q. Would you name some in the Charlotte area?

A. Thomas & Howard, C. D. Kenny, L. W. Petrie in Charlotte. Now, those are in the city, and we have more as we go out.

Q. Do you have any in Gastonia?

A. Yes, sir.

Q. Could you name some of those, sir?

A. Jack Siler Grocery, Albert Grocery.

Q. Do you encounter the Thomas & Howard
1967 competition out of Gastonia?

A. Yes, sir.

Q. And C. D. Kenny, also?

A. Yes.

Q. And how about at Monroe?

A. They both go there.

Q. C. D. Kenny and Thomas & Howard at Monroe?

A. Yes, sir.

Q. Do you have other competitors there?

A. Yes, sir.

Q. Will you name some of those?

A. Coker comes there from Hartford.

Q. Hartford, North Carolina?

A. South Carolina.

Q. Hartford, South Carolina?

A. Yes, and I don't know whether anyone else goes in there or not.

Q. How about at Concord?

A. Well, we have Ward, he is a competitor over there.

Q. Do you have C. D. Kenny?

A. Yes.

Q. And Thomas & Howard, also?

A. Yes, sir.

Q. Does your company purchase or handle salt?

A. Yes.

1968 Q. Does it make any purchases from the Morton Salt Company?

A. Yes.

Q. How are orders placed by your company with the Morton Salt Company for its requirements of salt?

A. Generally, through the broker.

Q. Through the broker?

A. Yes.

Q. Does a salesman from the Morton Salt Company call upon you and solicit orders, also, sir?

A. Well, he probably gets some of the orders, yes.

Q. But as a result of placing the orders with either

the salesman or the broker, commodities are shipped to you directly from the Morton Salt Company?

A. No, they are shipped in pool cars, is my understanding.

Q. Where is the car located when it arrives, sir?

A. It is on the broker's siding, Britt—it used to be Britt, it is now Shiver & Norcom.

Q. It used to be Britt?

A. Yes, sir.

Q. And it is now Shiver?

A. Shiver & Norcom.

Q. And it was put on their siding?

A. Yes.

Q. And you hauled it from their siding to your warehouse?

A. Yes, sir.

1969 Q. In your own trucks?

A. Yes.

Q. And at your own expense?

A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Nothing but the round package. We have probably bought a little of the 5-cent package.

Q. Have you ever bought any Triangle table salt, that is, the 5-cent package?

A. We have probably bought 100 cases in a year or two.

Q. And the Kosher salt, have you handled any of that, sir?

A. No, sir.

Q. You say you purchase mostly the round package salt?

A. Yes, sir.

Q. Has your company ever purchased on a carload basis, a full car of salt?

A. I don't recall one, no, sir.

Q. Most of the cars come as pool cars?

A. Yes, sir.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. Yes, sir.

Q. What kind of an allowance or discount does your company receive from the Morton Salt Company?

1970 A. Quantity, 10-cents a case.

Q. On the round package salt?

A. Yes.

Q. That is their free running and iodized blue label salt?

A. Yes, sir.

Q. Does your company, for its own use, purchase 5,000 cases of Morton's free running salt during a 12 consecutive months' period?

A. For our own use to the retail trade?

Q. Yes.

A. No, sir.

Q. Does your company invoice various competitors for the Morton Salt Company?

A. Yes.

Q. That is, for the round package salt?

A. Yes, sir.

Q. Commodities are not handled by your company, are they, sir?

A. The salt, no, sir.

Q. They are shipped direct from the Morton Salt Company to the various competitors?

A. Yes, sir, shipped in pool cars.

Q. And the only thing that you do is bill them for it?

A. That is correct.

Q. How long has that arrangement been in effect, 1971 Mr. Moody?

A. Well, I don't know. I would say a couple of years.

Q. Could you state the circumstances that were the cause of this arrangement that was entered into between your company and the Morton Salt Company, having reference to the invoicing of round package salt to your competitors?

A. To put them in line to meet competition.

Trial Examiner Purcell: Now, let me have that last question and answer, Mr. Reporter.

(The question and answer referred to was read by the reporter.)

By Mr. Haslett:

Q. To put the competitors in line to meet competition?

A. To put me in line, and the competitors.

Q. And what do you mean by meeting competition, Mr. Moody?

A. Well, we couldn't buy the quantities of the other jobbers.

Q. You could buy the quantity?

A. We couldn't that is the reason arrangements were made for that.

Q. Who made those arrangements?

A. The broker.

Q. The broker for the Morton Salt Company?

A. Yes, sir.

Q. And did you have discussions with him in regard to those arrangements?

1972 A. Yes.

Q. And as a result of which, you entered into an agreement to invoice the various competitors for their requirements of Morton's salt?

A. Yes, sir.

Q. The broker solicits the business and transmits the orders on to Chicago, and the only thing you do is invoice them, is that correct?

A. That is correct.

Q. Prior to the time that this arrangement was in effect, what price were you paying for the round package salt per case?

A. We were paying $1.50.

Q. At the present time, then, you are paying $1.50 less 10-cents?

A. Yes.

Q. Do you pass the full 10-cents on to the competitors?

A. No, sir.

Q. How much of it do you pass on, sir?

A. We charge them $1.42.

Q. $1.42?

A. Yes, sir.

Q. And what is the 2-cents for that is retained by the Charles Moody Company?

A. Billing.

1973 Q. A billing charge?

A. Yes, sir.

Q. And how was that arrangement effectuated?

A. Through the broker.

Q. Through the broker?

A. Yes, sir.

Q. The broker made the arrangements with your people?

A. Yes.

Q. If the Charles Moody Company did not have the combined purchases of its various competitors, the company could not get any discount from the Morton Salt Company, is that correct, sir?

A. No, sir, we wouldn't have the volume.

Q. You wouldn't have the volume?

A. No, sir.

Q. But with the combined purchases of the various competitors, why, you do have the volume in order to give you the 10-cent discount?

A. That is correct.

Q. And then the competitors you bill for the Morton Salt Company are getting an 8-cent discount?

A. That is right.

Mr. Haslett: Mr. Reporter, I hand you three documents and ask that they be marked for identification as Commission's Exhibit No. 157-A, B, and C.

1974 (The documents referred to were marked "Commission's Exhibit 157-A, 157-B and 157-C" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 157-A is a letter from the Morton Salt Company under date of January 21, 1942, directed to W. T. Adams, having reference to the Charles Moody Company at Charlotte, North Carolina, initialed by someone connected with the Morton Salt Company?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's Exhibit No. 157-B and C, is a statement prepared by the Morton Salt Company showing the number of cases sold to the various purchasers or customers of the Morton Salt Company that are invoiced by the Charles Moody Company for the months of September, October, November, and December of 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the documents, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instruments described will be received in evidence and marked Commission's Exhibit 157-A, B, and C.

(The documents referred to, heretofore marked for
1975 identification "COMMISSION'S EXHIBIT 157-A, 157-B and 157-C" were received in evidence.)

By Mr. Haslett:

Q. Mr. Moody, I hand you what has now been received in evidence as Commission's Exhibit 157-B and C, and ask you to state whether the names that appear thereon are purchasers of salt from the Morton Salt Company who are billed by the Charles Moody Company for the Morton Salt Company?

A. Well, I don't know, now, definitely, whether all of those—

Q. You say you don't know definitely whether all of them have been billed by the Charles Moody Company?

A. Yes.

Q. Are any of the names that appear thereon competitors of Charles Moody Company?

A. You mean, competitors in Charlotte, or competitors outside of Charlotte?

Q. At any instance where the Charles Moody Company encounters the competition of any of the competitors whose names appear on Commission's Exhibit 157-B and C.

A. There is a competitor, (indicating).

Q. What is his name, sir?

A. J. F. Bess & Company.

Q. And where is he located?

A. Gastonia. There is another competitor, (indicating).

1976 Q. What is the name of that company?

A. B. B. Austin, wholesalers.

Q. Where is he located?

A. He is here in Charlotte.

Q. Is he a competitor of Charles Moody Company?

A. Yes.

Q. Are there any other names that appear thereon that are competitors of Charles Moody Company?

A. Well, now, we lap territory with the Dixie Grocery Company.

Q. I see, sir.

A. L. W. Petrie here in Charlotte is a competitor.

Q. The names of those competitors that you have just enumerated purchase salt and are billed by the Charles Moody Company for their requirements of round package salt from the Morton Salt Company?

A. Yes, sir.

Q. Mr. Moody, how do you receive your discounts from the Morton Salt Company upon your purchases?

A. They are quarterly, every three months.

Q. And that is upon the purchases of the round package salt?

A. Yes.

Q. And what do you do with it when you receive it, sir?

A. Credit it to merchandise account.

Q. You credit it to merchandise account?

1977 A. It goes through the business just like all other monies that come in.

Q. And it is put into the working account of the business?

A. Yes.

Q. Is it used for any special thing, sir?

A. No, sir.

Q. Just used in the operation of the company?

A. Yes, sir.

Q. Do you know approximately the number of cases that the Charles Moody Company purchased from the Morton Salt Company for its own use?

A. I asked the bookkeeper before I left the office, and he said 11,000 cases two years ago, I believe. I don't think he knew about last year, what was shipped to us last year; he said in the neighborhood of 9,000 cases, I think.

Q. 9,000 cases?

A. Yes, sir.

Q. And that was for your own use?

A. No, that was what was billed to us.

Q. Oh, I see. Now, my question was, for your own use.

A. Oh, I couldn't tell you.

Q. Could you estimate it, approximately, sir? During the three months' period, as appears on Commission's Exhibit No. 157-B and C, will you state the number of cases that the Charles Moody Company purchased for its

1978 own use, as shown thereon?

A. There is 50 cases, and 175 cases.

Q. In the period shown on Commission's Exhibit 157-B and C, there would be 200 cases that Charles Moody purchased for its own use?

A. There would be 225 cases.

Q. 225 cases, is that correct, sir?

A. Yes.

Q. Is that the average number of cases that Charles Moody purchases during every three months' period from the Morton Salt Company?

A. That was a fair average, yes.
Q. Every three months' period?
A. Yes.
Q. Does your company receive any other discount or allowance from the Morton Salt Company other than the 10-cent allowance on the free running and iodized blue label salt?
A. No, sir.
Q. You say this arrangement was entered into at the suggestion of the broker of the Morton Salt Company?
A. Yes, sir.
Q. The purpose of it was to put yourself and the various competitors or wholesalers whose names appear on Commission's Exhibit 157-B and C in competition
1979 with other people that were getting the discount, sir?
A. Yes, sir.
Q. Prior to the time that your company began to receive a discount from the Morton Salt Company upon the purchases for its own use of the round package salt, did your company lose any salt business to any competitor?
A. Yes, sir.
Q. In the Charlotte area?
A. Yes.
Q. What was the name of that competitor?
A. I can't say that we lost it, but I know we had prices that we couldn't compete with.
Q. What is the price that you are now selling Morton's salt for per case?
A. $1.60.
Q. $1.60 per case?
A. Yes.
Q. Has there been a time in the past five years that any one of your competitors was selling salt for less than $1.60?
A. Well, I don't recall it.
Q. Have you ever had to lower your price below $1.60?
A. We haven't done it.
Q. You haven't?
A. No, sir. I have seen it sold for $1.55 from people that are competitive with me.
1980 Q. By people who are invoiced through you, sir?
A. Yes, sir.
Q. And you have never met that price?
A. No, sir, I don't recall ever meeting it.
Q. What effect would it have upon your business, Mr.

Moody, if one of your competitors sold it to your customers at $1.55 a case, while at the same time you were selling it at $1.60 a case?

A. I would lose that salt business.

Q. You would either lose it or you would have to meet the price?

A. Yes.

Q. If you didn't meet it, you would lose it?

A. Yes, sir.

Q. Prior to the time that you began to receive the discount from the Morton Salt Company upon the round package salt, what effect would it have had upon your business if one of your competitors was purchasing it at $1.40, while at the same time you were purchasing it at $1.50?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer, sir.

The Witness: I would lose the salt business.

By Mr. Haslett:

Q. If someone was purchasing Morton's salt at 1981 $1.35 per case at the present time, while at the same time you are paying $1.40 a case for it, would that in any way affect your business?

Mr. McBride: Same objection.

Trial Examiner Purcell: The objection is overruled. You may answer.

The Witness: Ask the question again, please.

Mr. Haslett: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Well, I don't know as it would, unless he would cut the price on it. Now, he may take more profit than I would want, and sell it as high as me.

By Mr. Haslett:

Q. But he would make more profit on it?

A. Yes.

Q. The price at which your company pays for its various requirements of groceries and allied products, is that an important factor in your business?

A. Yes, sir.

Q. And the price at which your company pays for salt, is that an important factor in the salt business of your company?

A. Yes, sir.

Q. In fact, the real reason for the combining of the purchases of the various competitors was to place you
1982 in a position where you could operate with competitors that were getting the discount, isn't that it, sir?

A. Yes.

Q. So, then the price at which a competitor was paying for his salt, if it was lower than yours, would place him in a favorable position, would it not, sir?

Mr. McBride? Same objection.

Trial Examiner Purcell: Objection overruled.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Is the price which your competitors sell salt given consideration by your company in determining the price at which it sell its salt products?

A. Yes, sir.

Q. You have to be competitive?

A. As near as I can, yes.

Q. Did you state you had a branch at Gastonia?

A. Yes, it is a separate corporation; all of them are.

Q. They are all separate corporations?

A. Every one of them, yes.

Q. Are they operating under the name of Charles Moody Company?

A. No, sir.

Q. What is the name of the corporation operating in Gastonia?

A. Spurrier & Company.

1983 Q. And is it a North Carolina corporation?

A. Yes, sir.

Q. And what position do you hold with it, if any, sir?

A. Why, I think I am vice-president. I will be frank with you, I don't know.

Q. You think you are vice-president of that company, sir?

A. Yes, sir.

Q. Are the purchases of the Spurrier Company of Morton's round package salt made through a broker or through Morton's representative, or are they made through your office here in Charlotte?

A. Made through Morton's man.

Q. They are made through Morton's salesman?
A. Through the broker, not through me.
Q. Does the Spurrier Company at Gastonia receive any discount or allowance from the Morton Salt Company upon its purchases?
A. Yes.
Q. They do, sir?
A. That is, it is billed through me.
Q. The same as other competitors?
A. Yes, sir.
Q. As shown on Commission's exhibit No. 157-B and C?
A. Yes, sir.
Q. Is that true as to other stores?
1984 A. Yes.
Q. Now, you have one at Monroe?
A. Yes.
Q. What is the name of that corporation?
A. Monroe Wholesale Grocery.
Q. And is it a corporation, sir?
A. Yes, sir.
Q. Incorporated under the laws of what state?
A. North Carolina.
Q. North Carolina?
A. Yes, sir.
Q. Do you hold any position with that company?
A. I am a director of that one.
Q. You are a director of that company?
A. Yes, sir.
Q. And the purchases of the Morton's round package salt and other commodities are placed with the salesman of the Morton Salt Company?
A. Or the broker, yes.
Q. Or the broker?
A. Yes.
Q. And they are billed by your office here in Charlotte?
A. Yes.
Q. And they receive a 10-cent or 8-cent discount?
A. Eight-cents.
1985 Q. Eight-cents; they receive the same as the other competitors?
A. Now, wait a minute. I declare I don't know whether we make the 2-cents on them or not, I will be frank with you.

Q. What do you mean by "making the 2-cents on them"?
A. In other words, whether they get 10-cents off or 8-cents off.
Q. You feel you are making 2-cents on the other competitors that are billed through you, do you?
A. Yes, sir.
Q. Now, where is the other branch located, sir?
A. Concord.
Q. And is that a corporation?
A. Yes, sir.
Q. What is the name of that corporation?
A. F. M. Youngblood & Company.
Q. F. M. Youngblood & Company?
A. Yes, sir.
Q. And are you an officer in that company?
A. Yes, sir.
Q. What position do you hold?
A. Vice-president.
Q. And is it a corporation?
A. Yes, sir.
Q. Incorporated under the laws of the state of
1986 North Carolina?
A. Yes, sir.
Q. And they make purchases in the same manner as the other two corporations?
A. Yes, sir.
Q. And they are billed by your company office here?
A. Yes.
Q. They are billed by your company office under the name of Charles Moody here in Charlotte?
A. Yes, sir.
Q. And you don't know whether they receive the 8-cents or the 10-cent discount?
A. I do not know, sir.
Trial Examiner Purcell: May we go off the record one second at this point?
(A discussion was had off the record.)
Trial Examiner Purcell: Back on the record.

By Mr. Haslett:

Q. Mr. Moody, do you own stock in all of the corporations of which you are either an officer or director?
A. Yes, sir.
Mr. Haslett: Mr. Reporter, I hand you two documents

and ask that they be marked for identification as Commission's exhibit No. 158-A and B.

(The documents referred to were marked "Com-
1987 mission's Exhibit 158-A and 158-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say that it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit 158-A is an invoice passing between the Morton Salt Company and the Charles Moody Company, numbered 85801, under date of December 11, 1941?

Mr. McBride: That is correct.

Mr. Haslett: And the document marked for identification as Commission's exhibit 158-B is an acknowledgment of an order from the Morton Salt Company, Washington, D. C., under date of December 8, 1941, consigned to Shiver & Norcom Company, Charlotte, North Carolina, billed to Charles Moody Company, Charlotte, North Carolina?

Mr. McBride: That is correct.

Mr. Haslett: I offer the two documents, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked Commission's exhibit No. 158-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 158-A and 158-B" were received in evidence.)

1988 Mr. Haslett: Mr. Reporter, I hand you two more documents and ask that they be marked for identification as Commission's exhibit No. 159-A and B.

(The documents referred to were marked "Commission's Exhibit 159-A and 159-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit 159-A is an invoice from the Morton Salt Company, numbered 89531, of commodities sold to Charles Moody Company, Charlotte, South Carolina, under date of January 2, 1942?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's exhibit 159-B is an acknowledg-

ment of an order from the Morton Salt Company, consigned to A. Blanton & Company, Marion, North Carolina, directed to Charles Moody Company, Charlotte, North Carolina, under date of December 18, 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the two documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the documents described will be received in evidence and
1989 marked by the reporter as Commission's exhibit 159-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 159-A and 159-B" were received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you two documents and ask that they be marked for identification as Commission's exhibit No. 160-A and B.

(The documents referred to were marked "Commission's Exhibit 160-A and 160-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's exhibit 160-A is an invoice from the Morton Salt Company, numbered 82046, directed to Charles Moody Company, Charlotte, North Carolina, under date of November 25, 1941?

Mr. McBride: That is correct.

Mr. Haslett: And that the document marked for identification as Commission's exhibit No. 160-B is an acknowledgment of an order by the Morton Salt Company under date of November 19, 1941, consigned to Shiver & Norcom Company, directed to Charles Moody Company, Charlotte, North Carolina?

Mr. McBride: That is correct.

Mr. Haslett: I offer the two documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection,
1990 the documents described will be received in evidence and marked by the reporter as Commission's exhibit No. 160-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 160-A and 160-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Moody, I hand you Commission's exhibit 159-A and B, and ask you to state whether that document marked Commission's exhibit 159-A is a typical invoice passing between the Morton Salt Company and the Charles Moody Company for the type of commodities shown thereon?

A. Yes, sir.

Q. Would the same also be true as to the document marked as Commission's exhibit No. 160-A?

A. Yes, sir.

Q. And it is also true as to the document marked Commission's Exhibit No. 158-A?

A. Yes.

Q. Mr. Moody, when you testified that the Charles Moody Company of Charlotte, North Carolina, had branches, you meant to say that other corporations were operated by joint ownership and directorship by the Charles Moody Company, didn't you, sir?

A. Yes, sir.

1991 Q. They are really not branches, are they, sir?

A. No, sir.

Q. They are separate corporations with separate names?

A. Yes, sir.

Q. And they are invoiced by the Charles Moody Company of Charlotte, North Carolina, in the same manner in which other wholesalers who purchase salt direct from the Morton Salt Company and are invoiced by the Charles Moody Company?

A. Yes, sir.

Q. Do you handle any other type of salt processed by the Morton Salt Company, other than the round package salt?

A. Well, I don't reckon I have bought 50 cases of the other in two years. I have bought just a little, I have filled some retail orders.

Q. Has your salt business in the round package salt increased since you have been receiving the discount on your purchases?

A. I will declare I don't know whether it has or not.

Q. You don't know whether it decreased or increased?

A. No, I wouldn't think it had decreased.

Q. Your margin of profit, of course, has increased, because you are now purchasing it for $1.40, where you were purchasing it for $1.50?

A. Yes.

Q. Did you have any conversation with the sales
1992 man of the Morton Salt Company at the time you entered into the agreement to bill to various customers of Morton Salt Company for their requirements?

A. I will declare I don't remember. I don't think so. I think all of my conversations were with the broker.

Q. With the broker?

A. Yes, sir.

Q. And would you state his name again, sir, if you can?

A. Shiver & Norcom.

Q. Shiver & Norcom?

A. Yes, sir.

Q. Do you know what the firm of McKnight & Company is?

A. At Shelby?

Q. Yes.

A. Wholesale grocers.

Q. And Charles M. Britt, at Asheville?

A. He is a broker?

Q. He is a broker?

A. Yes.

Q. The broker for the Morton Salt Company, if you know, sir?

A. I don't know, sir, I think so.

Mr. Haslett: Mr. Reporter, I hand you two additional documents and ask that they be marked for identification as Commission's exhibit No. 161-A and B.

(The documents referred to were marked "Commis-
1993 sion's exhibit 161-A and 161-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I say that it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit 161-A is a true and correct invoice passing between the Morton Salt Company and Charles Moody Company, numbered 76321, under date of October 28, 1941?

Mr. McBride: That is correct.

Mr. Haslett: Am I correct when I say it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as No. 161-B is a copy of the acknowledgement of the Morton Salt Company for the commodities shown on Commis-

sion's Exhibit 161-A, which is under date of October 28, 1941?

Mr. McBride: That is correct.

Mr. Haslett: Mr. Examiner, I offer both the documents into evidence, but on Commission's Exhibit 161-A, I offer the document for the typewritten and printed matter that is contained therein.

Trial Examiner Purcell: Excluding the balance?

Mr. Haslett: Yes, and the same as to Commission's Exhibit 161-B.

Mr. McBride: No objection.

Trial Examiner Purcell: With the statement of 1994 counsel for the Commission as to the subject matter appearing on the face of both exhibits, the latter described instruments will be admitted in evidence and marked Commission's Exhibit No. 161-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 161-A and 161-B" were received in evidence.)

Mr. Haslett: I think that is all.

Mr. McBride: I have no questions, Mr. Examiner.

Mr. Haslett: Thank you very much, Mr. Moody.

(Witness excused.)

1995 WILLIAM GOTSCH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you please state your full name for the record, Mr. Gotsch?

A. William Gotsch.

Q. And do you reside in Charlotte, North Carolina, sir?

A. I do.

Q. And in what business are you engaged?

A. Chain store groceries.

Q. And with what company are you connected, sir?

A. Great Atlantic & Pacific Tea Company.

Q And what position do you hold with that company?

A. Buyer.

Q. Do they have a branch here in Charlotte, sir?

A. Yes, sir.

Q. And you are the buyer for the Charlotte branch?
A. Yes, sir.
Q. And does the A&P Tea Company operate a warehouse here?
A. Yes, sir.
Q. And in the course of your duties, you make purchases of groceries and allied products for the Great Atlantic & Pacific Tea Company at its warehouse in Charlotte?
1996 A. I do.
Q. And you say that the Great Atlantic & Pacific Tea Company operates retail chain stores?
A. That is right.
Q. Do they do any wholesale business at all, sir?
A. None.
Q. They sell direct to the consuming public?
A. They do.
Q. Through their own outlets?
A. Yes.
Q. And they are owned by the A&P?
A. That is right.
Q. How long have you been connected with the company, sir?
A. 25 years.
Q. And how long have you been buyer here in Charlotte, sir?
A. 17 years.
Q. 17 years?
A. Yes, sir.
Q. How many stores are served from the warehouse here in Charlotte?
A. Within one or two stores, 188 I would say, approximately.
Q. Could you state geographically what territory is covered by those stores?
A. Practically the States of North and South Carolina, eliminating the extreme northeast corner of North
1997 Carolina and I would say the lower section of South Carolina, and one store in Tennessee.
Q. One store in Tennessee?
A. Yes, sir.
Q. So you are operating in three states?
A. In three states.
Q. Does the A&P Tea Company have any competitors?
A. Yes.

Q. Would you name some of your principal competitors?

A. Dixie Home Stores, Big Star.

Q. Is that the Colonial Stores?

A. That is the Colonial Stores.

Q. All right, sir.

A. Dixie Home Stores and E. Bender.

Q. E. Bender?

A. E. Bender Grocery Company.

Q. Now, is it a fact that you have a local retail chain here in Charlotte that you compete with?

A. Yes.

Q. Do you know the name of that chain, sir?

A. That is what I have been trying to think of, sir, it is Reid.

Q. Reid Stores?

A. That is right.

Q. And in addition to these principal competitors, 1998 in every place that the A&P has a retail outlet, it has a local competition of independently owned retail stores that are selling groceries and allied products direct to the consuming public?

A. Yes.

Q. And they are in great numbers?

A. I would say so.

Q. And in the other towns and cities located in the States of North and South Carolina, and where the A&P operates in Tennessee, there are other chain stores operating also?

A. In the majority of the points.

Q. In the larger cities particularly?

A. In the larger cities.

Q. Does your company sell salt?

A. Yes, sir.

Q. Does it make any purchases for its requirements of salt from the Morton Salt Company?

A. Yes, sir.

Q. How are orders placed with the Morton Salt Company for your requirements?

A. Usually through the representative or directly from the Washington office.

Q. Does the salesman ever call upon you, sir?

A. Yes, sir.

Q. The Morton Salt Company salesman?

1999 A. Yes, sir.

Q. And does the broker also call upon you?

A. No, the broker doesn't call upon us.

Q. He does not?

A. No, sir, he calls on other business, but not particularly in reference to Morton salt.

Q. And you don't know whether he has ever solicited any business for the Morton Salt Company?

A. As far as I know he has never solicited any business.

Q. But the salesman employed by the Morton Salt Company does call upon your office soliciting business for the Morton Salt Company?

A. Practically all of our orders go direct. He will call in, he doesn't particularly solicit, just a good will call, I would say, but I will say that 95 to 99 per cent of our orders go direct or either to the Washington office.

Q. As a result of which the Morton Salt Company causes salt to be shipped to you in cars?

A. Cars and pool cars; mostly in cars.

Q. Mostly in full carload lots?

A. Yes, sir.

Q. And in some occasions in pool cars?

A. Yes, sir.

Q. What type of salt does your company purchase from the Morton Salt Company?

2000 A. The round package and bulk salts, such as 10 pound and 25 pound bags.

Q. Does it handle quite a bit of the bulk salt?

A. Not an awful lot. We make up cars to bring in the round package mostly.

Q. But it does sell some bulk salt?

A. We do. It would amount to some tonnage in the course of a year.

Q. And does it handle any of the 5 cent package salt, table salt?

A. We have not for, I would say not less than three years anyway. We have handled it, but we haven't bought it in three years or more.

Q. In the last three years you have only purchased the round package salt and the bulk salt?

A. That is correct.

Q. And does your company receive any discounts or allowances from the Morton Salt Company upon the purchase of the round package salt?

A. Yes, sir.
Q. How much is that, sir?
A. 10 cents a case, quantity allowance.
Q. You get that here, the 10 cents a case here?
A. Payable quarterly to Charlotte.
Q. And you don't know of your own knowledge
2001 whether the Great Atlantic & Pacific Tea Company get any additional discounts from the Morton Salt Company?
A. I do not.
Q. Or whether any discounts go through the main office in New York?
A. I don't have any idea.
Q. As far as you know, you just get 10 cents per case?
A. That is right.
Q. Do you get any discounts on the bulk salt?
A. Excepting on the invoice, the items which they term as units in discounts.
Q. That is shown on the invoice?
A. That is shown on the invoice.
Q. And does the invoice from the Morton Salt Company show any discount on the round package salt?
A. No, excepting that they are billed at $1.60 less 10 cents. That brings our net billing price to $1.50.
Q. Well, that is the price you have been paying for it for a long time, isn't it?
A. That is the price we have been paying for it.
Q. The $1.50 price has been in effect for the past several years?
A. Oh, a number of years.
Q. Now, you say you receive a discount of 10 cents off of that $1.50 price?
2002 A. Payable quarterly yes.
Q. Payable quarterly, and that comes to you in the form of a check from the Morton Salt Company every three months?
A. I would presume, a check or credit memorandum. I don't see that when it comes in.
Q. But it is either a check or a credit memorandum?
A. I presume it is by check or credit memorandum.
Q. And that makes your net cost on the round package salt $1.40 per case?
A. $1.40.

Q. What do you sell it at to your customers per package?

A. I couldn't tell you, I am not in that field. We have our sales manager who sets the retail price.

Q. You don't know what the price is?

A. I could estimate 6 cents, or something in that neighborhood, but I couldn't tell you definitely what it retails at.

Q. I wonder if we adjourned just a moment, you could go across the hall and call up and get that information?

A. I could, yes.

Mr. Haslett: May we have a short recess, Mr. Examiner?

Trial Examiner Purcell: Yes, surely.

(A short recess was taken.)

Trial Examiner Purcell: All right, back on the 2003 record.

By Mr. Haslett:

Q. Mr. Gotsch, have you had an opportunity now to determine the retail price charged by your company to the consumers for Morton's round package salt per package?

A. I have.

Q. And what is the price in the Super Markets?

A. 7½ cents per package.

Q. That is charged by your company?

A. By our company.

Q. And in the regular stores?

A. 9 cents.

Q. Do you know how many Super Markets are operated by your company out of the Charlotte branch?

A. 50. That is, they are termed Super Markets or special development stores. They are all of the self-service type.

Q. And the rest of them are regular stores?

A. Regular stores.

Q. A&P stores where they have service?

A. Where they get service.

Q. By clerks?

A. That is right.

Q. I believe you stated your company purchases on a carload basis?

A. In the majority of instances, yes.

2004 Q. Does it get any discount from the Morton Salt Company when it purchases on the carload basis?

A. The prices are the same in either case, carload or pool cars.

Q. Both the same price?

A. Yes.

Q. Does your company receive any discounts on the bulk salt, other than what is shown on the invoice?

A. No, sir, nothing other than is shown on the invoice.

Q. It doesn't get any credit memorandum or money from the Morton Salt Company upon those purchases, as far as you know, sir?

A. No, as far as I know they do not. I wish to correct that. Where they meet a competitive condition they will bill it and render a credit memorandum for a unit or whatever it might be that they are meeting competition on, but it isn't an arranged discount.

Q. And when you say "they", who do you mean, sir?

A. Morton Salt Company.

Q. And what do you mean by the competitive condition?

A. I am surmising that they will find a competitor that is selling at a price under theirs.

Q. You mean one of Morton Salt Company's competitors?

A. One of their competitors will be selling under the price, under the quotation which they have, and they
2005 will attach a credit memorandum right with the invoice to meet that price.

Q. To put you in line with that price?

A. To be competitive with the other salt people.

Trial Examiner Purcell: Mr. Gotsch, you used the term "unit".

The Witness: Yes, sir.

Trial Examiner Purcell: What do you mean by that?

The Witness: Well, the salt people have some set-up in which they consider units of 5 cents on this item, and maybe 7 cents on that item. I will take as an illustration the 1½ pound and the 3 pound salt. In many instances they use discounts of 5 cents per unit. They may have a list price, just for the sake of conversation, they may have a list price of $1 less two units which would bring the cost down to 90 cents.

By Mr. Haslett:

Q. What effect would it have upon A&P's business if one of its principal competitors was selling Morton's salt at 7 cents a package while at the same time they were charging 7½ cents for it?

Mr. McBride: If the Examiner please, I will object to that question. The witness has disqualified himself as being able to testify with respect to the retail opera-
2006 tions of the company.

Mr. Haslett: I don't think the witness has disqualified himself because he said he didn't know the retail price of the commodity. He can certainly tell as a buyer for this company what effect he thinks it would have on his business if someone was selling at higher price. price.

Mr. McBride: It doesn't necessarily follow. He is buyer for the company and he testified that they have a salesmanager who controls the policy of the retail stores. He has no connection with it.

Trial Examiner Purcell: Of course, we have a different situation here than we had when I ruled on this question before, where we had either an individual owner or an officer of the company who was actively in touch with all of the various phases of the operation of the company. I am not prepared to say that this witness is qualified. Certainly, from the testimony that has been adduced here by this witness up to the present moment, I don't think he is qualified and I think I shall have to sustain the objection.

By Mr. Haslett:

Q. Mr. Gotsch, I believe you stated you have been with the company for 26 years?

A. 25 years.

Q. 25 years?

2007 A. Yes, sir.

Q. What positions have you held with the company in that time, sir?

A. In the stock department, and this work.

Q. In the buying?

A. Yes.

Q. As a buyer you have charge of buying all of the commodities that are resold by the Great Atlantic & Pacific Tea Company through its various outlets to the consuming public in this area?

A. Everything but meats and produce.

Q. The price at which you pay the various processers and manufacturers of the commodities which your company deals with, is that an important factor in your business?

A. Let me have that question again?

Q. Is the price at which your company pays for its various commodities which it resells to the consuming public an important factor in your business?

A. Yes.

Q. It is an important factor?

A. Yes.

Q. And is the price at which the competitors resell commodities to the consuming public given consideration by your company in connection with the setting of prices by the Great Atlantic & Pacific Tea Company on their commodities?

2008 Mr. McBride: Mr. Examiner, I make my same objection as I did in the last objection, for the same reason.

Trial Examiner Purcell: Let me have that last question.

(Question read.)

Mr. McBride: It is a slightly different question but it goes to precisely the same point, and in the absence of the same qualifications I discussed in support of my previous objection.

Mr. Haslett: Mr. Examiner, I think the ground for the objection is so baseless as to border on the fantastic. This man has been with the company for 25 years as a buyer. He has been in various capacities as an employee of this company, knows the operation of the company, and he certainly is qualified and capable of testifying as to the activities of the company in setting its prices and the price at which it pays for its various commodities. It is very important, and it is relevant to the Commission's case, and the Commission is entitled to know this.

Mr. McBride: The answer is, let the Commission find the right man, then.

Trial Examiner Purcell: Well now, Mr. Haslett, the witness has testified that he has for 25 years been employed by the A&P Tea Company in the stock room

2009 did you say, sir?

The Witness: In the stock book department.

Trial Examiner Purcell: In the stock book depart-

ment and as a buyer. For all the Examiner knows this witness may not be familiar at all in any way with the disposal of that merchandise after he has purchased it. You are asking this witness to testify on a hypothetical question, Mr. Haslett, and more or less as an expert, and upon facts which you have not brought out by this witness, or by any other witness within the hearing of this witness.

I really don't think that he is qualified, unless you can show some further qualification than has already been adduced here. It would seem to me that the proper source of that evidence would be by the man in the A&P Tea Company who has the responsibility of fixing the sale prices at retail.

Mr. Haslett: Well, Mr. Examiner, when I made my subpoena I directed it to the manager of the A&P Tea Company's branch at Charlotte. This gentleman appeared as have other gentlemen appeared, as buyer. Now, the buyer for the A&P Tea Company has appeared in New Orleans, he has appeared at Jacksonville and he has also appeared in Atlanta. I propounded the same questions to him or to those various buyers as I have this one. I come now facing an objection that this man isn't qualified.

The only thing that I can do is issue a new subponea 2010 and hold a hearing here tomorrow and bring in the manager of the company. I think counsel is really quibbling about the matter.

Trial Examiner Purcell: Well, of course, you must understand, Mr. Haslett, that the Examiner has nothing to do with that, and I am not prepared to characterize Mr. McBride's objection as quibbling. He may have some very good reason for doing it and he may have had a very good reason for not having raised the same objection in the past, as you have outlinerd. However, now that the question has been raised it is my duty to rule on it, and I must sustain the objection.

Now, if we have to stay here for a week I suppose it will have to be done. I can't let that influence the ruling.

Mr. Haslett: I am not trying to influence the ruling of the Examiner by stating that.

Trial Examiner Purcell: No, I didn't mean to infer that, Mr. Haslett, not at all, but I mean irrespective of any other consideration, that is the ruling, and we will have to do whatever is necessary to overcome the objection if

you feel that the evidence desired is material to your case, which I assume you do or you would not be urging your position.

By Mr. Haslett:

2011 Q. What is the name of the gentleman in your organization who has charge of the setting of the resale prices charged by your company to the consumer?

A. Mr. Christian.

Q. Where is he located, sir?

A. Charlotte.

Q. Is he available?

A. He is probably out to lunch right now.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: Back on the record.

By Mr. Haslett

Q. Mr. Witness, have you, in your experience with the Great Atlantic & Pacific Tea Company, had any connection with the resale price of various commodities bought by you that are sold to the consuming public?

A. I do have some connection. I have no definite control or have no final say in the matter. It is a question of just getting together occasionally with our sales department and reviewing these price structures.

Q. You do get together with your sales department and review the price structures?

A. Yes, sir.

2012 Q. Do you discuss resale prices?

A. Not on everything. We do get together in that manner, yes.

Q. And you discuss the prices which competitors are selling their commodities to the consuming public for?

A. That comes in on it, too, yes.

Q. Is it just a general discussion of the various prices at which the A&P are charging and the prices which competitors are charging, is that correct?

A. That is the sales manager's work which I, at every possible chance, give assistance to.

Q. And you have on occasions given assistance to the sales manager in connection with that work?

A. Just assistance, now, I have no control of it what-

soever. That is entirely within the hands of the sales department. I do make recommendations.

Q. And have you made recommendations?

A. I do make recommendations, yes.

Q. And have your recommendations been accepted on occasions?

A. Some, yes.

Q. Now, what effect would it have on your business if one of your competitors was selling salt at 7 cents a package to the consuming public while at the same time you were selling it at 7½ cents a package?

A. We would more or less be obliged to meet that 2013 competition, and naturally cut down our normal profit.

Q. Provided—

A. Provided they do not go below the cost.

Q. You wouldn't meet it if it went below the cost?

A. No.

Q. Do you know approximately the number of cases your company purchases from the Morton Salt Company of the round package blue label free running and iodized salt during a twelve consecutive month period?

A. For the period of 1941 I am sure it was over 7500 cases.

Q. Over 7500 cases, and that was sold in North and South Carolina and Tennessee?

A. That is right.

Q. Would the same figure be true approximately as to the year 1940?

A. I would say approximately, yes.

Q. Has your business of the round package salt increased in the last several years?

A. That would merely a guess but I would say yes.

Q. You feel that you purchase more salt each year from the Morton Salt Company of the round package type?

A. I would say particularly in 1941 over 1940.

Q. In 1941 over 1940?

A. Yes, sir.

Q. Would your business be in any way affected 2014 by the fact that one of your competitors was purchasing Morton's Salt at $1.35 a case while at the same time you were paying $1.40?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Now, addressing myself to the

objection as it now stands, I think that the supplemental questions which Mr. Haslett heretofore put to the witness have shown it to be qualified.

Mr. McBride: Oh, no, this is my usual objection to the purchase question, Mr. Examiner. It has no connection with my previous objection.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: That would be hard to answer except that our gross profit would be less by meeting that competition.

By Mr. Haslett:

Q. Do you think that the favored customer who got the $1.35 price would be in a favorable position?

A. Oh, definitely so by having a lower cost.

Mr. Haslett: I think that is all.

Mr. McBride: I have no questions, Mr. Examiner.

(Witness excused.)

2015 Call your next witness.

Mr. Haslett: Mr. Jamison.

J. L. JAMISON was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Jamison?

A. J. L. Jamison.

Q. And where do you reside, sir?

A. Greenville.

Q. South Carolina?

A. Yes, sir.

Q. And in what business are you engaged, sir?

A. Wholesale grocery business.

Q. With what company are you connected, sir?

A. Thomas & Howard Company.

Q. And where is Thomas & Howard Company located, that you are connected with?

A. In Greenville, South Carolina.

2016 Q. And is it a corporation?

A. Yes, sir.

Q. Incorporated under the laws of what state?
A. South Carolina.
Q. What territory is served by your warehouse at Greenville, South Carolina?
A. We operate within a radius of about 35 miles with the exception of one trip north, which we operate as far as Canton, North Carolina.
Q. Do you operate as far as Greenwood, South Carolina?
A. No, sir.
Q. Laurens?
A. We go to Laurens, yes.
Q. You go to Laurens?
A. Yes.
Q. Do you go up as far as Ashville?
A. Yes.
Q. What position do you hold with the company?
A. I am secretary and treasurer and manager.
Q. And you are manager?
A. Yes.
Q. How long have you been secretary-treasurer?
A. Since 1930.
Q. Prior to that time were you connected with Thomas & Howard?
2017 A. Yes, sir.
Q. In what capacity?
A. I was shipping clerk.
Q. Shipping clerk?
A. Yes, sir.
Q. Are you a stockholder in your own corporation?
A. Yes, sir.
Q. It is a separate corporation, not in any way connected with any other Thomas & Howard Corporations?
A. No, sir.
Q. No corporate connection between the Greenville Thomas & Howard Corporation and the Columbia Thomas & Howard Corporation?
A. No, sir.
Q. Does Mr. Timberlake hold any position in your company?
A. No, sir.
Q. Does Mr. Flintom hold any position in your company?
A. No, sir.

Q. Are they stockholders?

A. No, sir.

Q. Has the Thomas & Howard Company any competitors?

A. Yes.

Q. Would you name some of the competitors that Thomas & Howard have in and around Greenville, South Carolina?

A. Lipscom-Russell Company, Moore Milling Com-
2018 pany, Anderson Hardware Company, Dexter Grocery Company, R. P. Turner, Spratt Grocery Company. I think those would be the leading ones.

Q. How about C. D. Kenny Company?

A. Yes, sir, C. D. Kenny Company.

Q. Does the Greenville corporation operating under the trade name of Thomas & Howard have any branches connected with it?

A. Yes.

Q. Where are they located?

A. Seneca.

Q. Just one?

A. Yes.

Q. And that is in South Carolina?

A. Yes, sir.

Q. Is all of the purchasing done for the Seneca branch requirements through the Greenville office?

A. The principal things are.

Q. Does the manager at Seneca have the authority to do some purchasing?

A. Yes.

Q. Does Thomas & Howard have competitors at the Seneca branch?

A. Yes, sir.

Q. Could you name a few of those, sir?

2019 A. Yes, they have the Seneca Grocery Company, Dexter Grocery of Anderson, Anderson Hardware Company of Anderson, Carter Grocery Company at Gainesville, and those would be the principal ones.

Q. Does your company purchase or handle salt?

A. Yes.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. How does your company place its orders for its requirements of salt from the Morton Salt Company?

A. Through its salesmen and broker.

Q. Do they both call upon you soliciting orders for Morton Salt Company?

A. Yes, sir.

Q. As a result of which you place orders with such salesmen and broker?

A. Yes.

Q. And then in turn, commodities are shipped to you direct from the Morton Salt Company?

A. Yes, sir.

Q. Do they come in pool cars or full cars?

A. We got it both ways.

Q. I see, you have purchased on a carload basis?

A. Yes, sir.

Q. And you also purchase in pool cars?

2020 A. Yes, sir.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. The round package, and some of the other sizes. We purchase both kinds.

Q. Do you handle any Kleer brand?

A. Yes.

Q. Any Triangle brand, table salt?

A. Very little.

Q. Very little?

A. Yes.

Q. How about salt blocks?

A. Yes.

Q. And bulk salt also, sir?

A. Yes, sir.

Q. What is the price that your company pays for the round package salt from the Morton Salt Company?

A. $1.50.

Q. Per case?

A. Yes.

Q. That is their blue label free running and iodized salt, isn't it, sir?

A. Yes, sir.

Q. Do you know the price which it pays for the Kleer brand per case?

2021 A. I don't know off-hand. We handle very little of that.

Q. The price fluctuates quite a bit, doesn't it?
A. Yes.
Q. And what is the price Thomas & Howard are now selling the round package blue can per case to its customers for?
A. $1.60.
Q. Is that the general price?
A. Yes.
Q. Have you any other prices for it, sir?
A. No, sir.
Q. Does your company receive any discounts or allowances from the Morton Salt Company upon its purchases of the round can salt?
A. Yes, sir.
Q. How much does it receive?
A. 10 cents per case.
Q. Per case?
A. Yes, sir.
Q. And how is that paid, sir?
A. It is paid through Columbia.
Q. Through the Thomas & Howard Corporation at Columbia?
A. Yes, sir.
Q. And they in turn make payment to you?
A. Yes.
Q. When you place your orders with the salesman
2022 of the Morton Salt Company, the orders are placed direct, aren't they, sir?
A. Yes, sir.
Q. They are not placed through Columbia?
A. No, sir, they are not.
Q. Bills are paid direct to the Morton Salt Company?
A. Yes, sir.
Q. How often do you receive the discount through the Columbia office?
A. Every three months.
Q. Every three months?
A. Yes, sir.
Q. Do you know approximately the number of cases that Thomas & Howard Corporation of Greenville have purchased during the year 1940?
A. Yes, sir.
Q. What is that figure?
A. 1150.

Q. 1150 cases?
A. Yes.
Q. How about 1941?
A. 1500 in 1941.
Q. So your business increased in 1941 over 1940?
A. Yes, sir.
Q. Thomas & Howard Corporation in Greenville
2023 are responsible for the payment of the bills to the Morton Salt Company?
A. Yes, sir.
Q. The corporation at Columbia have nothing to do with them at all?
A. Paying the bills, no, sir.
Q. You say you act as manager for the company also, sir?
A. Yes, sir.
Q. Do you do the buying?
A. Yes, sir.
Q. And determine the sales price for the various commodities?
A. Yes, sir.
Q. Is the price which your company pays for its requirement of salt an important factor in your business?
A. Yes.
Q. And the price at which your competitors sell salt commodities is given consideration by your company in determining the price at which it is going to sell its salt products?
A. Yes, sir.
Q. What effect would it have upon your business, Mr. Jamison, if one of your competitors offered to sell and sold Morton's round package salt to your customers at $1.55 a case while at the same time you were charging $1.60 a case for it?
2024 A. We would lose business unless we met it.
Q. If you met it, why you would have to reduce your price to $1.55 to meet it?
A. Yes.
Q. And if you didn't meet it, why you would lose business?
A. Yes, sir.
Q. And you testified that the price which your company paid for its commodities was an important factor in your business. I will ask you this question: What effect would

it have upon your business if one of your competitors was purchasing Morton's salt at $1.35 a case while at the same time you were paying $1.40 a case for it?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: We would make less profit.

By Mr. Haslett:

Q. You would make less profit?

A. Yes, sir.

Q. Do you think the one who would be purchasing it at $1.35 a case would be placed in a favorable position?

A. Not unless he used it to reduce his price.

Q. Not unless he used it, you don't think his profit would be increased?

A. The profits would be more, yes.

Q. As to the difference in his profits, then, he
2025 would be in a favorable position?

A. Yes, sir.

Q. As compared with your profits?

A. Yes, sir.

Q. Do you receive any discounts on the other types of salt you purchase from the Morton Salt Company?

A. Yes, sir.

Q. Does that amount to approximately 5 per cent off the list price?

A. That is the unit, yes, 5 cents.

Q. It is about 5 cents, sir?

A. 5 cents, yes.

Q. You get that on the clear salt?

A. Yes, sir.

Q. And also on the bulk salt?

A. No, sir.

Q. Do you get it on the block salt?

A. It is arranged in proportion, I don't think it is 5 cents.

Q. I see, it might be 4 cents?

A. 2½ or something like that.

Q. It would be a sliding scale of a definite sum of money?

A. Yes.

Q. And the unit would be a definite sum of money?

A. Yes.

2026 Q. Does your company purchase $50,000 worth of salt during a twelve consecutive months period from all sources of supply?

A. No, sir.
Q. It purchases less than $50,000 worth?
A. Yes, sir.
Q. Do you do any promotional work in connection with the resale of the products to your customers?
A. Yes, sir.
Q. On the round package salt?
A. Yes, we do.
Q. What type of promotional work do you do, Mr. Jamison?
A. The salesmen carry samples.
Q. They carry samples with them?
A. Yes.
Q. How was that brought about? How were those arrangements entered into?
A. Well, we felt as long as it means more profit, we gave the salesmen the samples to push it to the trade, to sell it.
Q. Because of the fact that you were getting a 10 cent discount on it, you wanted to push the product?
A. It was a profitable item.
Q. Were you requested to do that by the Morton Salt Company or any representative from that company?
2027 A. No, sir.
Q. That was done on your own initiative?
A. Yes, sir.
Q. Do you think that accounts for the increase in 1941 over 1940?
A. Yes, sir.
Q. But the real incentive was the fact that you were getting a larger margin of profit on the commodity?
A. Yes.
Q. What do you do with that money when you receive it from the Morton Salt Company upon your purchases of the round package salt?
A. Credit it to merchandise account. It goes into the business.
Q. It goes into the business?
A. Yes.
Q. And it is used in the general course of the business?
A. Yes.
Q. It just goes in the general account?
A. Yes, and shows up in the profits of the business.
Q. It shows up in the general profits?

A. The general profits of the business.
Q. At the end of the year?
A. Yes.

Mr. Haslett: Mr. Reporter, I hand you a document
2028 and ask that it be marked for identification as Commission's Exhibit No. 162.

(The document referred to was marked "Commission's Exhibit 162" for identification.)

By Mr. Haslett:

Q. Mr. Jamison, I hand you now what has been marked for identification as Commission's Exhibit 162, and ask you to state what that is, if you know, sir?

A. That is the purchases of round package salt from the Morton Salt Company for 1940 and 1941.

Q. Do the invoices numbers that appear thereon represent the invoice numbers that were received by your company from the Morton Salt Company upon the purchases as shown on Commission's Exhibit No. 162?

A. Yes, sir.
Q. And was that gotten up at your request?
A. Yes, sir.
Q. And done under your supervision?
A. Yes.
Q. Obtained from the files and records of the Thomas & Howard Company of Greenville, South Carolina?
A. Yes.
Q. And is true and accurate according to those books and records as far as you know, sir?
A. Yes, sir.

2029 Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: Mr. Examiner, I will have to object to this. I think the invoices themselves are obviously the best evidence, and I don't mean to be an obstructionist in Mr. Haslett's efforts to put this information in the record. If I had any way of checking it I might be willing to—in fact, I would be willing to stipulate it in, but here the record will be bound, I suppose, by a tabulation that is unsupported by the supporting document. We have no way of knowing, whatsoever, whether the dates shown, the numbers shown, or the items described are accurate. The witness has already testified that as far as he knew they purchased the total number of cases shown here, but I don't think the document is admissible in evidence as such.

Mr. Haslett: Mr. Examiner, in reply to Mr. McBride, I have shown through this witness that they were gotten up at his request and under his supervision, and that they were true and accurate according to the books and records of his company. Now, he is the secretary-treasurer of the company and is in charge of such books and records, and I think he is qualified to testify as to the accuracy of the figures that appear on Commission's Exhibit 162 for identification.

I offer the document, however, only for the type-
2030 written notations that appear thereon, and not for any other matter that may appear thereon except the typewritten notations.

Mr. McBride: Well, of course, that is all there is on the document, is typewriting, so I assume that is what he is offering it for. My objection is directed specifically to that.

Trial Examiner Purcell: I think, Mr. Haslett, that the objection is well taken.

Mr. Haslett: Mr. Examiner, the figures having been identified by an officer of the company, the man who is in charge of the books, records and files of the company.

Trial Examiner Purcell: Yes, it is a compilation however—let's get off the record.

(Discussion off the record.)

Trial Examiner Purcell: Back on the record.

Make your tender, Mr. Haslett.

Mr. Haslett: I am willing to stipulate with counsel that in connection with offering the document for the typewritten portion thereon, that I would be willing to have him check the figures, the dates and the numbers that appear thereon, with his Chicago office, and if there are any variances or additions thereto, the exhibit to be changed in accordance with such figures.

Trial Examiner Purcell: Do you accept that, Mr.
2031 McBride?

Mr. McBride: I will accept that and will withdraw my objection on the basis of that stipulation.

Trial Examiner Purcell: Under the circumstances the document will be received in evidence and marked as Commission's Exhibit No. 162.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 162", was received in evidence.)

By Mr. Haslett:

Q. Mr. Jamison, I believe you testified that your corporation in Greenville is a separate corporation and is in no way connected with the Columbia corporation of Thomas & Howard, or the Charlotte corporation of Thomas & Howard?

A. No, it is not connected.

Q. Mr. Flintom has nothing to do with your company?

A. No, sir.

Q. And Mr. Timberlake has nothing to do with your company?

A. No, sir.

Q. That is true as to the branch also, sir?

A. That is right.

Q. At Seneca?

A. Yes, sir.

Mr. Haslett: I think that is all, Mr. Examiner.

Mr. McBride: No questions.

2032 Mr. Haslett: That is all, Mr. Jamison. Thank you very much for coming over.

(Witness excused.)

Mr. Haslett: May we have a five minute recess, Mr. Examiner?

Trial Examiner Purcell: Yes.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over, gentlemen.

Mr. Haslett: I will call as my next witness Mr. Ed Jones.

2033 ED M. JONES was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Jones?

A. Ed M. Jones.

Q. And do you reside in Charlotte, North Carolina?

A. Yes, sir.

Q. What business are you engaged in, sir?

A. Manager, C. D. Kenny Company.

Q. And what is the C. D. Kenny Company?

A. Well, they are wholesale distributors of foodstuff.

Q. Do they sell groceries and allied products to the retail stores?

A. Yes, about 1500 different items.

Q. Is it a corporation, sir?

A. I don't think so right now. Our company changed hands last July. I think it is owned by an individual now. It is The C. D. Kenny Company, and it used to be C. D. Kenny Company.

Q. It is The C. D. Kenny Company now, sir?

A. Yes, sir.

Q. Where is the principal office?

A. Baltimore, Maryland.

2034 Q. And they have a branch located in Charlotte, North Carolina?

A. Yes, sir.

Q. And you are manager of that branch?

A. Yes, sir.

Q. How long have you been manager?

A. Four years.

Q. And prior to that time, were you connected with C. D. Kenny Company?

A. I was connected with them in various other capacities, salesman, shipping clerk, and used to be a coffee packer.

Q. What are your duties now as manager of the Charlotte branch?

A. Well, I do all buying and supervising of sales and manage the business.

Q. What territory is covered by your branch of the C. D. Kenny Company here in Charlotte, sir?

A. Approximately a fifty mile radius.

Q. Does C. D. Kenny Company have any competitors?

A. Oh, yes.

Q. Could you name some of them, please, sir?

A. Well, how many would you want?

Q. Well, as many as you can remember.

A. In Charlotte, there is Thomas & Howard Company, Charles Moody Company, Whiteside, J. C. Whiteside,
2035 L. W. Petrie, Austin Wholesale, and then in Gastonia, we have J. F. Bess Company, Albion Grocery, and there is another one over there, but I can't think of it right now. Then, Ware & Son, Kings Mountain, McKnight at Shelby, and Thomas & Howard Company of Chester.

Q. Chester, South Carolina?

A. Chester, South Carolina, and Thomas & Howard Company of Hickory, North Carolina, and Thomas & Howard

Company of Salisbury, North Carolina. They all come in near me. Then, we have the Dixie Grocery Company of Lexington, and Merchants Produce & Grocery of Hickory. Then, we have the W. B. Ward Company in Concord, and F. M. Youngblood Company, of Concord, and then Johnson Grocery in Albemarle, and the Monroe Wholesale Grocery Company in Monroe, and Bennett Grocery at either Wadesboro or Rockingham, I forget.

Q. I think that is enough, sir.

A. Then, Coker out of Hartsville, South Carolina, they come into Lancaster, South Carolina.

Q. Are all of your products sold within the state of North Carolina?

A. No, sir, North and South Carolina.

Q. You go into South Carolina from here?

A. Yes.

Q. You say you handle groceries and allied products?

A. That is right.

2036 Q. And resell them to the retailer stores?

A. Yes, sir.

Q. Do you handle salt?

A. Yes, sir.

Q. Who do you purchase your salt from?

A. Well, we purchase from Jefferson Island, some from Carey Salt Company, and some from Morton Salt Company.

Q. And what type of salt do you purchase from the Morton Salt Company?

A. Well, we purchase the round package, which is Morton's free running and iodized, the square package 14/10's, 18/3's, 12/4's, and ice cream salt, both hundreds, 10/10's and 15/4's, stock salt, plain and medicated, and also the old fashion 100 pound just raw rock salt. We carry a complete line of their salts.

Q. And how do you place your orders with the Morton Salt Company for your requirements of salt?

A. I place those through their local broker and representative.

Q. They call at your place of business?

A. Yes.

Q. You give them orders?

A. Yes.

Q. As a result of which, commodities are shipped to you direct from the Morton Salt Company?

2037 A. In pool cars and straight cars, yes.

Q. Do you buy on a full carload basis?
A. Yes, sir.
Q. And also in pool cars with other customers?
A. Yes. in pool cars which come to the broker's warehouse, and all customers pick up from there.
Q. From the broker's warehouse?
A. Yes.
Q. Those customers that are participating in the pool car haul their products from the broker's warehouse to their particular warehouse?
A. That is right.
Q. In their own trucks?
A. Well, I don't know about their part, I do with mine.
Q. C. D. Kenny hauls it in its own trucks?
A. Yes, sir.
Q. And Morton Salt Company does not compensate you for that cartage?
A. No, sir.
Q. What does C. D. Kenny's branch here in Charlotte pay the Morton Salt Company for the round package salt per case?
A. $1.40.
Q. It pays them $1.40 per case?
A. It is billed at $1.50 and then each three months there is a 10-cent credit memorandum.
2038 Q. And what does it pay for the flat package, the 5-cent salt?
A. Well, it varies.
Q. Does it vary a great deal?
A. Yes, we get 5-cents, one unit, if we qualify for the quantity discount, which is 5-cents.
Q. And you get 5-cents on the square salt, that is, the 5-cent salt?
A. That is the 36/1½ squares.
Q. Do you get any other discount from the Morton Salt Company?
A. You mean, on these particular items?
Q. On any other item other than those two?
A. Yes, there is a discount on the 14/10's, and also the 18/3's.
Q. What sort of a discount do you get on those?
A. Well, I couldn't right offhand recall. I believe it is 14-cents, I don't know. It is5 their regular quantity discount on 14/10's, now.

Q. How about the other types?

A. I believe that is the only one I recall right off.

Q. So, you are getting discounts on three particular types of commodities processed by the Morton Salt Company?

A. I don't know so very much about that, because that is all handled through our home office in Baltimore.

2039 They turn that on to me, I don't know how often, I couldn't say how often, but it is possibly every three months.

Q. You say you get a 10-cent discount on the round package blue label free running and iodized salt?

A. That is correct, I am sure.

Q. You pay $1.50 for it, and every three months you get a 10-cent rebate from the Morton Salt Company on your purchases?

A. I get it from C. D. Kenny Company, not from Morton.

Q. How does it come to you from the C. D. Kenny Company's main office in Baltimore?

A. I testified that we get a slip saying "We have credited your account No. 1005 with so many dollars from Morton Salt Company."

Q. On the round package salt?

A. Yes, and we credit that, we work our salesmen on a straight commission, and we give that to them. We give them their cost on all merchandise, we include that in their cost. In other words, we give them the cost of $1.40.

Q. You give them the cost of $1.40?

A. Yes, and then they are paid a commission on what they get, which, according to our list price is $1.60.

Q. $1.60?

A. Yes.

Q. And their commission is based upon your cost?

2040 A. Yes, of $1.40.

Q. $1.40?

A. Yes.

Q. And if you didn't get the discount, the commission would be based on $1.50?

A. That is right, which would put them out of line with competition, that is, so far as their earnings are concerned.

Q. Is that also true as to the other items that you get a discount on?

A. Yes.

Q. That the commission of the salesman is based upon the net cost to your company?

A. That is right.

Q. You say you get the discount in the form of a credit memorandum from your office?

A. We have an account number for all expenses, and they credit that to account No. 105, which is merchandise.

Q. Account No. 105 is merchandise?

A. Yes, sir.

Q. What do you mean by that?

A. Well, that is credited to the merchandise account, which would be the same thing if I would buy 100 pounds of sugar from a refinery and charge it to my operation at $5. If I buy a bag of salt at $1, I charge that to the operation at $1. We charge everything net. We don't
2041 take any discounts, but what the salesmen participate in them. It is an open book for the salesmen, the same as the president of the company.

Q. Would the 10-cent discount have any effect upon the earnings of the C. D. Kenny branch at the end of the year?

A. You mean, if we didn't receive it?

Q. No, when you do receive it, does it show up in the earnings at the end of the year for C. D. Kenny's branch at Charlotte?

A. Well, it shows just like any other item.

Q. It shows your net cost of $1.40 instead of $1.50?

A. Yes, sir. In other words, we don't take what you would say if somebody hands you $10, and you have made it. We just take it as a flat cost and it goes through the business at the cost. Now, we have an account No. 142, which is credited for other incomes which would take in any allowances or any kick-backs whatsoever that the salesman doesn't participate in, but he participates in this cost, just like any other item.

Q. So, the 10-cent allowance per case on the round package salt wouldn't be put to account No. 142?

A. No, account No. 105.

Q. And the salesman's commission would be based on the net cost of it?

A. In the 20-cents, yes.

2042 Q. And that 20-cents represents the differential between the cost and the selling price?

A. That is right.

Q. You say your selling price is $1.60?

A. Yes, sir.

Q. Has it been $1.60 for a long time?

A. We used to try to get $1.70 for it, until our company changed hands a year ago. They used to give us the cost of—we didn't work our salesmen on a commission, and naturally we didn't notice these costs so much, because it all went into the merchandise account, just like any other wholesale grocery would, and I didn't know much about it then, because they didn't let me know those things as much as they do now, because they were handled from Baltimore.

But since that time, why, I get credit for it just the same, but I didn't know it was handled in the manner it is now. It is handled in the same manner, but I didn't have knowledge of it.

Q. Why did you reduce the price from $1.70 to $1.60?

A. Well, all competition did that.

Q. All competition did that?

A. Yes.

Q. When was that done?

A. Well, in fact, it never did officially get up. We just tried at one time to get $1.70 for it, but we were out 2043 of line, therefore we declined our price to $1.60.

Q. You were out of line with whom?

A. Well, with most all of our competitors.

Q. No particular ones?

A. No, sir.

Q. I believe you stated you got 5-cents on the Kleer brand salt?

A. We handled Silver, which is a brand that is put up exclusively for C. D. Kenny Company.

Q. Is that a private labeled brand?

A. It doesn't have our name on it, but we have an exclusive on that package for all of our branches over the country.

Q. It is packed by Morton Salt Company exclusively for C. D. Kenny Company?

A. That is right. Now, it is in this territory. They might use it in other states that we don't cover, I don't know, for some other competitors, but in the territory that we cover, we have the exclusive on that package, I understand.

Q. And it is trade marked "Silver"?

A. Yes.

Q. And you get a 5-cent discount as one unit on a per case basis?

A. Yes. In other words, that credit memo is always attached to the invoice.

Q. And does that come from the Morton Salt Company?

2044 A. Yes.

Q. That credit memorandum comes direct from the Morton Salt Company to the C. D. Kenny Company branch in Charlotte?

A. That is right, sir.

Q. And it shows the quantity discount on the 5-cent salt?

A. Yes, sir.

Q. Is that true as to the—what was the other type of salt?

A. You mean, the 14/10's?

Q. Yes. A credit memorandum is attached to the invoice?

A. That is right.

Q. And when you authorize the payment of a particular invoice, the credit memorandum is deducted from the invoice price?

A. On carload basis, it is less credit memo, less freight. We pay the freight but deduct it.

Q. Less credit memo, less freight?

A. Yes.

Q. So, the credit memo would be deducted from the invoice price, in addition to the freight?

A. That is right.

Q. And that is true on the 14/10's, and on the 5-cent salt?

A. Yes, but not the round salt.

Q. That doesn't show up on the invoice at all, does it?

A. No, sir.

2045 Q. That comes to you every three months?

A. Yes, sir.

Q. What effect would it have upon your business if one of your competitors offered to sell salt to your customers at $1.55 a case, while at the same time you were selling—you were charging $1.60 a case for it?

A. The "A" stores would buy it. I would say he would get most of the business.

Q. What about the difference if he offered it to one of your "B" stores at $1.55?

A. Well, they would get it, too, that is, a good business man would give him the business.

Q. That is true to "C", also?
A. That is right.
Q. And you would either have to meet the price or pass the business up?
A. That is right.
Q. You don't know whether or not C. D. Kenny get an additional discount on the round package salt, other than the 10-cent discount?
A. No, sir, I do not. I would say they don't, because they do turn us all discounts on all commodities.
Q. But you, of your own knowledge, don't know whether they do or not?
A. No, sir.
2046 Q. Is the price which your company pays for its requirements of salt an important factor in your business?
A. Yes.
Q. What effect would it have on your business, Mr. Jones, if one of your competitors was purchasing salt from the Morton Salt Company, the round package salt, at $1.35 a case, while at the same time you were paying $1.40 a case for it, sir?
Mr. McBride: My usual objection, Mr. Examiner.
Trial Examiner Purcell: Objection overruled.

By Mr. Haslett:
Q. You may answer.
A. Let's see, if they pay $1.35 and I pay $1.40?
Q. Yes.
A. What effect would it have?
Q. Yes.
A. Well, they would get most of the business if they used it in their cost. Now, if they went out and used it as an extra profit, why, we would be on an equal basis.
Q. But you testified that the price at which your company pays for its products is an important factor in your business.
A. It is, if you use it in your business as a cost, and competition governs all of your trade, of course.
Q. Do you think that the competitor who was being favored with a lower price of $1.35 would be in a more
2047 favorable position than you, paying $1.40?
Mr. McBride: The same objection, Mr. Examiner.
Trial Examiner Purcell: Objection overruled.

The Witness: Sure, he would be, if he used it. Now, if he pays $1.35 and goes to the trade at $1.60, and I pay $1.40 and go to the trade at $1.60, we would be on an equal basis. He would just make more money.

By Mr. Haslett:

Q. His margin of profit would be increased, wouldn't it?

A. That is right.

Q. What effect would it have on your business if one of your competitors offered to sell the 36/1½ five-cent salt at 5-cents a case under the price that you were charging for it, would that in any way affect your business?

A. Yes, sir.

Q. You would either have to meet that price or pass it up?

A. That is right.

Q. Or pass the business up?

A. Yes, sir.

Q. Is that also true as to the 14/10's?

A. Yes.

Q. That is, 14 ten pound packages to a case, isn't it, sir?

A. That is right.

Q. And what do you sell that for, if you know, sir?

A. Well, as I recall, we sold that for $2.40.

2048 Q. Per case?

A. Yes, sir.

Q. And if someone offered to sell it at $2.30 a case to your customers, would that in any way affect your business?

A. Yes.

Q. It would?

A. Yes, sir.

Q. Adversely?

A. Yes, sir.

Q. What discount did you get on that, sir? I believe you testified 14-cents.

A. Twenty-two cents, I believe. Now, I wouldn't offer that as a concrete statement.

Trial Examiner Purcell: I think the testimony was 14-cents.

The Witness: I just don't recall. I wouldn't say what the correct figure is. I know the square package is 5-cents, that is definite.

By Mr. Haslett:

Q. And you know that you get a discount on the 14/10's?

A. Yes, sir.

Q. Do you sell any salt to your competitors, any Morton Salt Company salt to your competitors?

A. No, sir.

Q. All of your salt sales are at wholesale to the retailers?

2049 A. That is right. Maybe some of the smaller wholesale groceries at times will come over and pick up, if they run short, just a friendly agreement that we have, that we sell them at naturally a small, possibly half the profit that we would our regular customers, because they are wholesalers.

Q. Do you know the price which you charge them for the round package salt per case?

A. Well, I would possibly charge them $1.50.

Q. $1.50?

A. That would give me 10-cents, and they, in turn, go to their trade at 10-cents, so it would be a fifty-fifty proposition.

Q. That is not a general practice, is it?

A. No, no, very seldom. We do that on all other items, as well as salt, that is a general practice usually between wholesalers.

Q. Do you do any promotional work in connection with the resale of the products of the Morton's round package salt?

A. Well, occasionally, yes, just about the same as we do with other commodities in our business.

Q. You don't do any more for the Morton Salt Company than you do for anybody else?

A. No, sir.

Q. What promotional work do you do for Morton's?

A. Well, carry samples.

2050 Q. Carry samples of the round package salt?

A. Yes, round and square package, also.

Q. Who asked you to do that?

A. No one.

Q. Do you know approximately the number of cases of round package salt that you purchased in the year 1940 from the Morton Salt Company?

A. I do from July to December, 1940. At that time we changed our records, and I keep records here in the Char-

lotte branch now, but prior to that time, the records were all kept in Baltimore.

Q. How many cases did you purchase from July, 1940 to December, 1940?

A. 525 cases of the round package.

Q. And how many cases of the round package did you purchase in 1941?

A. 1,250 cases.

Q. 1,250 cases?

A. Yes, sir.

Q. Do you know the number of squares that you purchased in 1940, from July on?

A. 275.

Q. That was from July to December, 1940?

A. 1940, yes.

Q. You purchased 275 cases?

2051 A. That is right, yes.

Q. And how many cases of the 36/1¼'s did you purchase during 1941?

A. 2,110 cases.

Q. 2,110 cases?

A. Yes, sir.

Q. Have you got the 14/10's there?

A. No, sir, I haven't.

Q. Has the C. D. Kenny Company branch at Charlotte purchased during a 12 consecutive months' period, $50,000 worth of salt from any single salt producer?

A. You mean, the Charlotte branch?

Q. Yes.

A. No, sir.

Q. Has it purchased in the aggregate from all sources $50,000 worth of salt during a 12 consecutive months' period?

A. No, sir.

Q. The figures you have just given us is the total number of round cans purchased in 1941, and as far as you know, from July to December, 1940?

A. Yes, sir.

Q. And in each instance, they are less than 5,000?

A. 5,000 cases?

Q. Yes, of the round package salt?

2052 A. Yes, sir.

Q. Is Thomas & Howard Company your principal competitor?

A. Yes, sir.

Q. Have you ever lowered the price of the round package salt to meet the competition of Thomas & Howard?

A. No, sir. Excuse me, we have run into some of the small distributors over the country that in some instances would possibly sell large customers at $1.55 or $1.50, some of the smaller customers, but I think it was just to try to get extra business.

Q. You mean that when they sold it at that price, the low price of $1.55 or $1.50, they did it to get other types of business?

A. I don't know, but that is what we would think. I would tell our men to pass it up, because we weren't interested in that kind of competition.

Q. You didn't want to reduce your price?

A. No, sir.

Mr. Haslett: I think that is all, Mr. McBride.

Mr. McBride: I have no questions.

Mr. Haslett: Thank you very much, Mr. Jones.

(Witness excused.)

Mr. Haslett: Mr. Examiner, I am going to call up and see if I can get my witness that is due here at four to come at three.

2053 Trial Examiner Purcell: Very well, sir.

Mr. Haslett: May we have a few minutes recess, sir?

Trial Examiner Purcell: You certainly may.

(A short recess was taken.)

Trial Examiner Purcell: All right, gentlemen.

Mr. Haslett: Mr. Austin, will you come around, please?

D. W. AUSTIN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, Mr. Austin?

A. D. W. Austin.

Q. And do you reside in Charlotte, North Carolina?

A. Yes, sir.

Q. In what business are you engaged, sir?

A. Wholesale grocery.
Q. And with what company are you connected?
A. D. B. Austin Wholesale Grocery. That is, I own it and operate it.
Q. You own it and operate it?
A. Yes, sir.
2054 Q. It is not a corporation?
A. No, sir.
Q. And what is the business of the D. B. Austin Grocery Company?
A. Wholesale groceries, that is, food merchandising and wholesale.
Q. You sell groceries and allied products to the retailers?
A. To the retailers, yes.
Q. You run the business yourself?
A. Yes, sir.
Q. Are you in charge of the operations of the company?
A. Yes, sir.
Q. Within a radius of how many miles do you do business around Charlotte?
A. Approximately 15.
Q. Around 15 miles?
A. Yes, sir.
Q. Do you have any competitors?
A. Yes, sir.
Q. Could you name a few of them, please, sir?
A. Well, Thomas & Howard, Charles Moody Company, C. D. Kenny Company, L. W. Petrie and J. Whitesides, I believe.
Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Do you make any purchases from the Morton Salt Company?
2055 A. Yes, sir.
Q. How are your orders placed with the Morton Salt Company for your requirements of salt?
A. I place them with the broker, Shiver & Norcom.
Q. Does the salesman call upon you, also?
A. Yes, sir.
Q. And do you give him any orders?
A. Well, not often. I give them to the broker.
Q. I see. Then the broker, as a result of those orders

you give to the broker, commodities are shipped to you by the Morton Salt Company?

A. Of course, I buy them recently from the Charles Moody Company, because at the time I was buying from the Morton Salt Company, of course, I was paying 8-cents a case more for it.

Q. Now, when you give your orders to the broker, the commodities which you have ordered are shipped to you in pool cars?

A. Yes, sir.

Q. With other commodities?

A. Yes, sir.

Q. And do you go to the siding where the car is located and haul it to your warehouse?

A. Yes, sir.

Q. In your own trucks?

2056 A. Yes, sir.

Q. And then who bills you for that particular commodity?

A. Charles Moody Company.

Q. And what is the price that you are paying at the present time for the round package salt per case?

A. $1.42.

Q. $1.42 per case?

A. Yes, sir.

Q. Is that the only type of sale that you purchase from the Morton Salt Company?

A. No, sir, I have purchased the 5-cent package, that 36/1½'s.

Q. Do you purchase any of that at the present time, sir?

A. Yes, sir.

Q. And do you purchase that from the Morton Salt Company?

A. Yes, sir.

Q. And is that billed to you direct from the Morton Salt Company?

A. Direct, yes, sir.

Q. The only salt that is billed to you through Moody is the round package salt?

A. The round package, yes.

Q. Do you know approximately the number of cases that you purchase of the round package salt per year?

A. Approximately 600 cases.

2057 Q. Approximately 600 cases a year?

A. Yes, 50 cases a month.

Q. How long have you been paying $1.42 a case for the round package salt?

A. I would say since probably last June or July, last year. I don't know exactly.

Q. June or July of 1941?

A. Yes, sir.

Q. Why was it that your company began to be billed by the Charles Moody Company for the round package salt?

A. Well, to enable me to save 8-cents a case.

Q. Couldn't you have purchased it from the Morton Salt Company and buy it at $1.42 a case?

A. No, sir, they charged me $1.50.

Q. Prior to the time that you began to be billed by the Charles Moody Company, did you purchase the round package salt direct from the Morton Salt Company?

A. Yes, sir.

Q. What price did you pay for it then?

A. $1.50 a case.

Q. And that price had been in effect for a long time?

A. As far as I know, as long as I have been in business.

Q. Then when you began to be billed from the Charles Moody Company, you paid $1.42 a case for it?

A. That is right, sir.

2058 Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 163.

(The document referred to was marked "Commission's Exhibit 163" for identification.)

By Mr. Haslett:

Q. Mr. Austin, I hand you what has been marked for identification as Commission's Exhibit No. 163, and ask you to state what that is, if you know, sir?

A. What do you mean, this?

Q. No, what is the document? Is it an invoice from the Charles Moody Company?

A. Yes, sir.

Q. Has it a date, sir?

A. Yes, sir.

Q. And is it directed to your company?

A. Yes.
Q. D. B. Austin Wholesale Grocery Company?
A. Yes, sir.
Q. What is the date?
A. October 23, 1941.
Mr. Haslett: I offer the document.
Mr. McBride: No objection.
Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and
2059 marked by the reporter as Commission's Exhibit No. 163.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 163" was received in evidence.)

By Mr. Haslett:

Q. Mr. Austin, I hand you what has been admitted into evidence as Commission's Exhibit No. 163, and ask you to state whether that is typical of the invoices passing between the Charles Moody Company and the D. B. Austin Wholesale Grocery Company of Charlotte, North Carolina, for the types of commodities as shown thereon?
A. Yes, sir.
Q. You have received a number of those, have you?
A. Yes, sir.
Mr. Haslett: Mr. Reporter, I hand you two documents and ask that you mark them for identification as Commission's Exhibit No. 164-A and B.

(The documents referred to were marked "Commission's Exhibit 164-A and 164-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated between counsel representing the respondent herein and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 164-A is an invoice from the Morton Salt Company numbered 42577, of commodities sold to the D. B. Austin
2060 Wholesale Company of Charlotte, North Carolina, under date of May 6, 1941?
Mr. McBride: That is correct.
Mr. Haslett: And that the document marked for identification as Commission's Exhibit 164-B is a letter from the D. B. Austin Wholesale Grocery Company to the Morton Salt Company under date of June 15, 1941, where pay-

ment was made for the invoice numbered 42577, known as Commission's Exhibit No. 164-A?

Mr. McBride: That is correct.

Mr. Haslett: I offer the two documents.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be admitted in evidence and marked by the reporter as Commission's Exhibit Nos. 164-A and B.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 164-A and 164-B" were received in evidence.)

By Mr. Haslett:

Q. Mr. Austin, I hand you now Commission's Exhibit 164-A and B, and ask you to state whether Commission's Exhibit 164-A is typical of the invoices passing between the Morton Salt Company and D. B. Austin Wholesale Grocery Company for the commodities of Morton's free running and iodized salt and ice cream salt sold 2061 prior to the time that you began to be invoiced through the Charles Moody Company?

A. Yes, sir.

Q. That is the type of invoice that came to you, sir?

A. That is correct.

Q. Mr. Austin, I believe you stated that you do purchase some of the 5-cent salt from the Morton Salt Company?

A. Yes, sir.

Q. Do you know approximately the number of cases of that particular type of salt you purchased during a year's period?

A. No, sir, I do not, because I buy other salt of the same weight and size from other companies.

Q. Do you receive any discount from the Morton Salt Company upon the 5-cent 36/1½'s?

A. No, sir.

Q. At the time that you began to be billed for the Morton's round package products through the Charles Moody Company, did you get a 10-cent allowance or 8-cent?

A. Prior to this? Before I began to buy from Moody?

Mr. Haslett: Read the last question back, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I got an 8-cent allowance.

By Mr. Haslett:

Q. Have you ever gotten 10-cents?

2062 A. No, sir.

Q. Eight-cents is the maximum you have gotten?

A. Yes, sir.

Q. How was that arrangement entered into whereby you were to get 8-cents a case on the round package salt?

A. Through their broker. The broker explained to me that by buying through Mr. Moody that we would get an 8-cent a case rebate, or in other words, be billed 8-cents a case less than $1.50.

Q. And that was the beginning of it?

A. Yes.

Q. And you decided to do that?

A. Yes, sir, in order to save the 8-cents a case.

Q. In order to save the 8-cents a case?

A. Yes, sir.

Q. You don't submit your orders to the broker through the Charles Moody Company, do you, sir?

A. No, sir.

Q. You submit them direct?

A. Direct to the broker.

Q. Do you give the broker, also, your orders for your requirements of the 36/1½'s, that is, the 5-cent salt?

A. I gave that to their representative.

Q. The Morton representative?

A. Yes.

2063 Q. That is the salesman you speak of?

A. Yes, sir.

Q. Has your company ever purchased on a carload basis, a full car?

A. No, sir.

Q. What is the price which your company charges for the round package salt per case to the retailer stores?

A. $1.60 a case.

Q. Has that price been in effect for a long time?

A. Yes, sir.

Q. What effect, Mr. Austin, would it have on your business if one of your competitors offered Morton's salt at $1.55 a case to your customers, while at the same time you were charging $1.60 a case for it?

A. Well, it wouldn't enable me to meet competition unless I was deprived of that much profit, which I am entitled to.

Q. You would either have to meet the price or lose the business?

A. Or lose the business, yes.

Q. If you met the price, you would be getting 5-cents less for your salt?

A. Yes.

Q. What effect would it have on your business if prior to the time that you began to be billed through Charles Moody Company, if you were paying $1.50 a case
2064 for Morton's salt, while at the same time some of your compeittors were paying $1.40 a case for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Well, if I sold it at the same price, $1.60, I just didn't make the profit that I am now making on Morton's salt.

By Mr. Haslett:

Q. You are now making 8-cents more than you were before?

A. Yes, sir.

Q. Do you think that the customer who was getting the $1.40 price, while at the same time you were paying $1.50, was placed in a favorable position?

Mr. McBride: Same objection.

Trial Examiner Purcell: Objection overruled.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Mr. Austin, what effect does it have on your business by the fact that some of your competitors are now purchasing Morton's salt at $1.40 a case, while at the same time you are paying $1.42 a case for it, sir?

Mr. McBride: Same objection.

Trial Examiner Purcell: Objection overruled.

The Witness: Well, it seems that most of my competitors have a uniform price, now, that is, so far as
2065 going to the retail trade is concerned. They are all getting $1.60 for it, so far as I know.

Q. Well, how about your purchase price, that is what I am interested in?

A. Oh, yes; well, of course, it means that they are buying 2-cents a case cheaper than I am.

Q. Do you think their margin of profit is increased by that 2-cents?

A. Yes, sir.

Q. Mr. Austin, is your business in any way affected by the fact that some of your competitors are purchasing the square 36/1½ five-cent salt at a 5-cent lower price than the price that you are now paying for it, sir?

Mr. McBride: Same objection.

Trial Examiner Purcell: Objection overruled.

The Witness: Not to my knowing.

By Mr. Haslett:

Q. I believe you misunderstood my question.

Trial Examiner Purcell: Read the question back, please, Mr. Reporter.

(The question referred to was read by the reporter.)

By Mr. Haslett:

Q. Five-cents per case lower than the price that you are paying for it?

A. No, sir, I don't know, because I don't know
2066 that I have had any competition that I would say caused me to lose any business on that basis.

Q. Well, if a competitor was purchasing it 5-cents lower than you were paying for it, wouldn't he be placed in a better position?

A. Oh, sure, yes.

Mr. McBride: I want to lodge my objection to that, please.

Trial Examiner Purcell: The objection is overruled.

The Witness: Oh, sure, yes.

By Mr. Haslett:

Q. You say he would be placed in a favorable position?

A. Yes.

Q. What effect would it have on your business, Mr. Austin, if one of your competitors was selling the square package 36/1½'s five-cent salt at 5-cents under the price that you were charging per case for that particular type of salt?

A. Consequently, I wouldn't get the business. I would either pass upon the business, or I would have to meet competition, which would cut my margin of profit and I wouldn't get my margin of profit by meeting the competition.

Q. Have you any retailers connected with your firm?

A. No, sir.

Q. Do you do any promotional work for Morton?

A. No, sir.

2067 Q. The discount that you receive on your round package salt is reflected in the invoice price, is it not, sir?

A. Yes, sir.

Mr. Haslett: I think that is all.

Mr. McBride: I have no questions, Mr. Examiner.

Mr. Haslett: Thank you very much, Mr. Austin, for coming, sir.

(Witness excused.)

2068 Civil Service Room No. 102,
Post Office Building,
Winston-Salem, North Carolina,
Tuesday, May 26, 1942.

Met, pursuant to adjournment, at 10:00 a. m.

Before:

J. A. Purcell, Trial Examiner.

Appearances:

John Haslett, Esq., attorney for the Federal Trade Trade Commission.

L. M. McBride, Stearns & McBride, Room 450, 310 South Michigan Avenue, Chicago, Ill., for the respondent.

2069 Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 165.

(The document referred to was marked "Commission's Exhibit 165" for identification.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as "Commission's Exhibit 166" for identification.)

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 167.

(The document referred to was marked "Commission's Exhibit 167" for identification.)

2070 Mr. Haslett: Mr. Reporter, will you please mark this document as Commission's Exhibit No. 168.

(The document referred to was marked "Commission's Exhibit 168" for identification.)

Mr. Haslett: And will you mark the document which I hand you herewith as Commission's Exhibit No. 169 for identification?

(The document referred to was marked "Commission's Exhibit 169" for identification.)

Mr. Haslett: And I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 170.

(The document referred to was marked "Commission's Exhibit 170" for identification.)

Mr. Haslett: I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 171.

(The document referred to was marked "Commission's Exhibit 171" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 165 is an advertising medium used by the Morton Salt Company in connection with the resale of its products to the consuming public known as a can hanger?

Mr. McBride: That is correct.

2071 Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the document will be received in evidence and marked by the Reporter as Commission's Exhibit 165.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 165", was received in evidence.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 166 is an advertising medium used by the Morton Salt Company in connection with the resale of its products to the consuming public through retailer stores known as a Morton card?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection,

the document will be received in evidence and marked Commission's Exhibit 166.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 166", was received in evidence.)

Mr. Haslett: Mr. McBride, am I also correct when
2072 I state it is stipulated between counsel herein that the document marked for identification as Commission's Exhibit No. 167 is an advertising medium used in connection with the resale of Morton's round package blue label salt to the consuming public through retailer stores known as the counter display?

Mr. McBride: That is correct.

Mr. Haslett: I offer it, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document will be received in evidence and marked Commission's Exhibit No. 167.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 167", was received in evidence.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated that the document marked for identification as Commission's Exhibit No. 168 is an advertising medium used in connection with the resale of Morton's round package salt to the consuming public known as Little Umbrella Girl?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection,
2073 the instrument will be received in evidence and marked Commission's Exhibit No. 168.

(The instrument referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 168", was received in evidence.)

Mr. Haslett: Am I also correct, Mr. McBride, when I state it is stipulated between counsel herein that the document marked for identification as Commission's Exhibit No. 169 is an advertising medium used in connection with the resale of Morton's products to the consuming public known as a pennant?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document will be received in evidence and marked Commission's Exhibit No. 169.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 169", was received in evidence.)

Mr. Haslett: Is it also stipulated, Mr. McBride, that the document marked for identification as Commission's Exhibit No. 170, which is an advertising medium used by the Morton Salt Company in connection with the resale of its round package blue label salt to the consuming
2074 public, known as a window poster?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document will be received in evidence and marked Commission's Exhibit No. 170.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 170", was received in evidence.)

Mr. Haslett: Am I also correct, Mr. McBride, when I say it is stipulated between counsel herein that the document marked for identification as Commission's Exhibit No. 171 is an advertising medium used by the Morton Salt Company in connection with the resale of its round package salt to the consuming public known as a floor display card?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument will be received in evidence and marked Commission's Exhibit No. 171.

(The instrument referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 171", was received in evidence.)

2075 Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 172.

(The document referred to was marked "Commission's Exhibit 172" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 172 is a list of the names of retailer

grocerymen who have received compensation from the Morton Salt Company in connection with its floor display merchandising plan that was enforced in the states specified by Mr. Peterkin during his direct examination in Chicago, and was furnished to me by the Morton Salt Company voluntarily at my request?

Mr. McBride: A list of all of them.

Mr. Haslett: That is a list of all of them?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document will be received in evidence and marked Commission's Exhibit 172.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 172", was received in evidence.)

2076 Mr. Haslett: Mr. Examiner, I would like for the record to show that the document now received in evidence known as Commission's Exhibit No. 172 represents the names of all retailers who receive compensation from the Morton Salt Company in connection with the Morton floor display merchandising plan, pursuant to an agreement entered into between the Morton Salt Company and such retailers, which agreement is known as Commission's Exhibit No. 25 and was introduced in evidence in Chicago through Mr. Daniel Peterkin, president of the respondent company.

Mr. McBride: With this one correction, that Commission's Exhibit No. 25 is a sample form of the agreement which was entered into between the Morton Salt Company and each of the persons respectively listed on Commission's Exhibit No. 172.

Mr. Haslett: That is accepted.

Trial Examiner Purcell: Let the record so show.

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 173-A, B, C, D and E.

(The document referred to was marked "Commission's Exhibits 173-A, 173-B, 173-C, 173-D and 173-E" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the documents marked for identification as Com-

2077 mission's Exhibit No. 173-A, B, C, D and E, are photographs of the floor display merchandising done pur-

suant to the general contract known as Commission's Exhibit No. 25, and for which the names of the retailers whose names appear on Commission's Exhibit No. 172 were compensated by the Morton Salt Company, such photographs being the display of Morton's round package salt in some of the stores of the customers whose names appear on Commission's Exhibit No. 172?

Mr. McBride: They are samples of it.

Mr. Haslett: They are samples of it?

Mr. McBride: That is right.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents will be received in evidence and marked Commission's Exhibits 173-A, B, C, D and E.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 173-A, 173-B, 173-C, 173-D and 173-E", were received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 174.

(The document referred to was marked "Commission's Exhibit No. 174" for identification.)

2078 Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 174 contains figures furnished by the Morton Salt Company at my request showing the advertising expense used in connection with the promotion of the sale of Morton's products for the years 1936, 1937, 1938, 1939, 1940 and 1941, expended by the Morton Salt Company?

Mr. McBride: As reported in the federal income tax returns for those years, yes.

Mr. Haslett: As so shown by the federal income tax returns?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 174.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 174", was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 175.

(The document referred to was marked "Commission's Exhibit 175" for identification.)

2079 Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 175 is a blank broker's contract of the form used by the Morton Salt Company as an agreement between Morton Salt Company and its various brokers located throughout the country?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 175.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 175", was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you herewith three documents and ask that they be marked for identification as Commission's Exhibits Nos. 176-A, B and C.

(The documents referred to were marked "Commission's Exhibits 176-A, 176-B and 176-C" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the documents marked for identification as Commission's Exhibits Nos. 176-A, B and C are the figures furnished at my request from the Morton Salt Company of

2080 the dollar volume of business in all types of commodities processed by the Morton Salt Company and sold to C. D. Kenny Company of Baltimore, Maryland, as to its various branches located in several States of the United States?

Mr. McBride: As to all branches.

Mr. Haslett: As to all branches located in the several States of the United States, is that correct?

Mr. McBride: That is correct.

Mr. Haslett: I offer the documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and marked Commission's Exhibits Nos. 176-A, B and C.

(The documents referred to, heretofore marked for iden-

tification "COMMISSION'S EXHIBITS 176-A, 176-B AND 176-C", were received in evidence.)

Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's Exhibit No. 177.

(The document referred to was marked "Commission's Exhibit No. 177" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as "Commission's Exhibit No. 177" shows the number of round, package blue label free running and iodized salt sold by the Morton Salt Company to Setzer Stores at Jacksonville, Florida, for the year of 1940 and 1941, and was fur-

2081 nished to me by the Morton Salt Company voluntarily at my request?

Mr. McBride: In terms of cases.

Mr. Haslett: In number of cases?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the document described will be received in evidence and marked Commission's Exhibit No. 177.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 177", was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's Exhibit No. 178.

(The document referred to was marked "Commission's Exhibit No. 178" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 178 are figures furnished by the Morton Salt Company showing the number of blue cans sold for the years 1939 and 1940 to the Roundtree Grocery Company and also to the South Georgia Wholesale Company, South Georgia Grocery Company and Capitol Stores Company for the year 1939 and 1904, and also shows the number

2082 of blue cans sold through the Nashville office of the respondent, Morton Salt Company, for the years 1939 and 1940, and also containing figures showing the number of blue cans sold for the year of 1939 and 1940 to the Timberlake Grocery Company, the value thereof in dollars and cents, the other types of commodities sold to the Timberlake Grocery Company, and the total volume of all com-

modities sold to the Timberlake Grocery Company for the year of 1939 and 1940?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 178.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 178", was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit 179-A, B, C, D, E, F and G.

(The document referred to was marked "Commission's Exhibit 179-A, 179-B, 179-C, 179-D, 179-E, 179-F and 179-G" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Com-
2083 mission's Exhibit No. 179-A to G, inclusive, shows the number of blue cans sold to the various branches of the Great Atlantic & Pacific Tea Company in the area generally east of the Mississippi River for the years 1937, 1938, 1939, 1940 and 1941; the value thereof, other types of table salt in terms of dollars and cents, the balance of the salt sales made in terms of dollars and cents, and the total salt sales made in terms of dollars and cents for the area specified thereon at each of the billing points in the territory covered therein?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 179-A, B, C, D, E, F and G.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 179-A, 179-B, 179-C, 179-D, 179-E, 179-F and 179-G", was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 180.

(The document referred to was marked "Commission's Exhibit 180" for identification.)

2084 Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 180 is an invoice passing between the Morton Salt Company and the C. D. Kenny Company, of Macon, Georgia, numbered 65852, dated May 13, 1942, and is typical of the invoices passing between the Morton Salt Company and the various branches of C. D. Kenny Company?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 180.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 180", was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 181-A, B, C, D, E, F, G, H, I, J and K.

(The document referred to was marked "Commission's Exhibit 181-A, 181-B, 181-C, 181-D, 181-E, 181-F, 181-G, 181-H, 181-I, 181-J and 181-K" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's Exhibit No. 181-A to K, inclusive, is a tabula-

2085 tion prepared by the Morton Salt Company in pursuance to the subpoena duces tecum duly served on Mr. Daniel Peterkin, president of the respondent, Morton Salt Company, showing for the years 1937, 1938, 1939, 1940 and 1941, the number of blue cans, the value of the blue cans, the value in dollars of all other salt and the total aggregate dollar value for each of the respective years named, of the sales made by Morton Salt Company to each of its customers classified as $50,000 discount customers and 50,000 blue case discount customers. These figures are prepared for the entire national sales of each respective customer, and that Commission's Exhibit 181-A to K for identification includes in complete form the partial tabulation shown by Commission's Exhibit No. 44 with respect to Safeway Stores, Inc., and that Commission's Exhibit No. 181-A to K for identification recapitulates the totals by years and classifications shown on Commission's Exhibit No. 45-A with respect to C. D. Kenny Company.

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked Commission's Exhibit No. 181-A to K, inclusive.

(The document referred to, heretofore marked for
2086 identification "COMMISSION'S EXHIBIT 181-A, 181-B, 181-C, 181-D, 181-E, 181-F, 181-G, 181-H, 181-I, 181-J and 181-K"; was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you three documents and ask that they be marked for identification as Commission's Exhibits Nos. 182-A, B and C.

(The documents referred to were marked "Commission's Exhibits 182-A, 182-B and 182-C" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the documents marked for identification as Commission's Exhibits 182-A, B and C, is a tabulation showing the names and addresses of all purchasers of table salt from the Morton Salt Company who have received rebates, discounts or allowances of 10 cents per case during the 1937, 1938, 1939, 1940 and 1941, for the East, South and East-Central territories, such documents known for identification as Commission's Exhibits 182-A, B and C, show only the purchases during the years specified therein when such customers received the 10 cent discount on the blue package salt, with the tabulations being on an annual basis?

Mr. McBride: That is correct.

Mr. Haslett: I offer the documents, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the documents described will be received in evidence and
2087 marked Commission's Exhibits Nos. 182-A, B and C.

(The documents referred to, heretofore marked for identification "COMMISSION'S EXHIBITS 182-A, 182-B AND 182-C", were received in evidence.)

Mr. Haslett: Mr. McBride, am I correct when I state that Commission's Exhibit No. 182-A, B and C for the year 1941 shows the names of customers who have just begun to attempt to qualify, but who have not as yet received any discount in view of the fact that their twelve months qualification period has not been completed?

Mr. McBride: That is correct.

Mr. Haslett: Now, Mr. McBride, the document known as Commission's Exhibits 182-A, B and C supersedes Com-

mission's Exhibits No. 43-A, B, and C, the document known as Commission's Exhibits 43-A, B and C being a tabulation offered me at the time the figures were in the process of being tabulated, and which are now reflected in Commission's Exhibit No. 182-A, B and C in final form?

Mr. McBride: That is correct.

Mr. Haslett: Mr. Examiner, I would like for the record to be clear and show definitely that the subpoena duces tecum duly served upon the respondent, through its president, Mr. Daniel Peterkin, at the hearing in Chicago, has been fully complied with by the respondent.

Trial Examiner Purcell: Let the record so show.

2088 Mr. Haslett: Mr. Examiner, I would like for the record to show that Commsision's Exhibit No. 181-A to K, inclusive, represents the figures of those who qualified during the years as specified and called for in the subpoena. That is, June 19, 1936, to September 18, 1940.

Mr. McBride: That is correct.

Mr. Haslett: I will call as my first witness Mr. Hall.

2089 MARVIN G. HALL was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Hall, will you state your full name for the record, please, sir?

A. Marvin G. Hall.

Q. And where do you reside, sir?

A. In Durham.

Q. Durham, North Carolina?

A. Yes.

Q. And what business are you engaged in?

A. In the wholesale grocery business.

Q. How long have you been in the wholesale grocery business?

A. Since 1925.

Q. Since 1925?

A. Yes, sir.

Q. And with what company are you connected, sir?

A. Draughon-Hall Company.

Q. What position do you hold with that company?

A. Manager and owner.
Q. Manager and owner?
A. Yes, at the present time.
Q. Is it a corporation, sir?
2090 A. No, sir.
Q. A privately owned firm?
A. Yes.
Q. Would you state what territory your company does business in?
A. Just Durham County and a part of Orange County.
Q. Is that within a radius of how many miles around Durham?
A. It will average around 12 miles.
Q. Around Durham?
A. Yes, sir.
Q. And what is the business of the Draughon-Hall Company? Is it a wholesale grocery business?
A. Yes, a wholesale grocery business.
Q. Does it sell groceries and allied products to the retailer stores?
A. Yes.
Q. And has your company any competitors?
A. Do you mean in the same kind of business?
Q. That is right, sir.
A. Yes, sir.
Q. Would you name some of those, please, sir?
A. Thomas & Howard Company, Southern Feed & Grocery Company, J. L. Wilkerson Company.
Q. And C. D. Kenny Company.
A. C. D. Kenny Company, yes.
2091 Q. Are they all located in Durham?
A. Yes.
Q. And do you have any competitors outside of Durham?
A. Well, some come in there from Raleigh.
Q. Some come in from Raleigh?
A. Yes, sir.
Q. Some of these wholesale grocery companies come into Durham from Raleigh?
A. Yes.
Q. Does your company purchase or handle salt?
A. Yes, sir.
Q. Does it make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. What type of commodities are purchased from the Morton Salt Company by your company?

A. I handle just about all they make, all different sizes and grades; is that what you mean?

Q. Yes.

A. Yes, sir.

Q. You handle practically everything that they process?

A. Yes, that is, all the grocery items that they make.

Q. Would you handle Anchor salt?

A. Yes.

Q. And you handle Baker's salt?

A. Yes.

2092 Q. And Triangle table salt?

A. Yes.

Q. Rock Crystal salt?

A. Yes.

Q. And Morton's iodized and free running salt?

A. Yes, sir.

Q. That is, in the blue can?

A. Yes, that is right.

Q. Do you handle any block salt at all?

A. No, sir.

Q. For cattle?

A. No, sir, those are all the packages, except one more, ice cream salt.

Q. I see, sir.

A. That is in packages.

Q. Do you handle any of the Kleer crystal salt?

A. No, sir.

Q. Just the Triangle table salt?

A. Yes.

Q. That is the 5 cent package salt?

A. Yes, sir.

Q. How are orders placed by your company with the Morton Salt Company for its requirements?

A. How are they paid?

Q. No, sir, how are orders placed by your com-

2093 pany with the Morton Salt Company for its requirements?

A. I give part of them to the salesman and part of them I mail in, if they are not there when I need them.

Q. Does the broker call upon you?

A. Yes, sir.

Q. Do they have a broker in Durham?
A. No, sir.
Q. Where is the broker located that calls upon you?
A. He is in Raleigh.
Q. What is his name?
A. W. N. Connally.
Q. And he is the broker for the Morton Salt Company?
A. Yes, sir.
Q. And then a salesman for the Morton Salt Company calls upon you?
A. Yes, sir.
Q. And both of them solicit orders for your requirements of Morton salt?
A. Yes, sir.
Q. As a result of which, commodities are shipped to you by the Morton Salt Company?
A. Yes, sir.
Q. Do they come in pool cars?
A. Part of them.
Q. Part of them in pool cars?
2094 A. Yes, sir.
Q. Do you purchase on a carload basis also, sir?
A. Yes, sir.
Q. That is, a full car?
A. Yes, 75 per cent of my purchases come in in full cars, straight cars.
Q. Do you know the amount that your company pays the Morton Salt Company for its round package salt per case, that is, the blue can salt?
A. Yes, we pay them $1.50.
Q. $1.50 a case?
A. Yes, sir.
Q. And what do you sell it to your customers for, sir?
A. $1.60.
Q. $1.60?
A. Yes.
Q. And how long has the $1.50 price been in effect?
A. I don't recall. It has been several years, though. They changed the pack of it. It used to be packed different than what it is now, a few years ago, but the $1.50 price has been in effect for several years.
Q. And how long has your $1.60 price been in effect; that is, your resale price?
A. It has been in effect for some time.

Q. For some time?

2095 A. Yes. I don't recall just how long.

Q. Does your company receive any discounts or allowances from the Morton Salt Company upon its purchases?

A. Yes.

Q. What type of discount does it receive from the Morton Salt Company?

A. Ten cents on the case, on the blue can only, the round package.

Q. Is that the only discount it receives?

A. Yes, sir.

Q. It doesn't receive any discount on the other types of salt purchased from the Morton Salt Company?

A. No, sir.

Q. Only on the round package salt?

A. That is right.

Q. How is that paid to your company?

A. That is paid in the form of a check at the end of each quarter.

Q. It comes to your company in the form of a check every three months?

A. Yes, sir.

Q. What do you do with it when you get it, sir, the money?

A. I put it in the business.

Q. You use it in the regular course of your business?

A. Yes, sir.

2096 Q. Do you deposit it to your general funds?

A. Yes, sir.

Q. Is there a special account on your ledger where you keep a record of the number of payments you receive from the Morton Salt Company?

A. No, sir.

Q. Does your company bill any of its competitors for the Morton Salt Company's round package salt?

A. Yes, sir.

Q. Why does it do that, sir?

A. That is a group purchase that we have to buy a certain quantity per year in order to gain this 10 cents a case rebate.

Q. And will you state the circumstances surrounding the agreement, if any, regarding the group purchasing in order to be eligible for the 10 cent rebate?

A. Well, they require 5,000 cases a year.
Q. Who told you that, sir?
A. The broker and the salt man.
Q. The Morton salesman?
A. Yes.
Q. And who told you about the selling or the billing by your company of its various competitors for the round package salt, the grouping of their purchases in order to be eligible for this rebate? How was that arrangement entered into?
2097 A. The broker made that arrangement to begin with.
Q. With you?
A. Yes.
Q. And will you state the general circumstances surrounding that arrangement? Did he approach you in regard to the matter?
A. Yes.
Q. And what was said?
A. Well, in this group of wholesalers, all the round package salt that is shipped is billed to me.
Q. Billed to you?
A. Yes, sir.
Q. All right.
A. And I re-bill it to these different wholesalers.
Q. Do you give them the benefit of the 10 cent rebate that you get from the Morton Salt Company?
A. I did to begin with, but the cost was so heavy on me that they changed it, and I give them 8 cents. They made arrangements with the different concerns to allow me two cents a case for the trouble of billing, postage and the work that I have to do in connection with it.
Q. And who do you mean when you say "they"?
A. All of these wholesalers that I re-bill to.
Q. Was that arrangement made with the knowledge of the broker?
2098 A. Yes.
Q. And with the knowledge of the salesman of the Morton Salt Company?
A. Yes.
Q. The orders are not placed by you, are they, for the various requirements of the competitors that are billed by you?
A. No, sir.

Q. You place your orders only for your own requirements?

A. That is right.

Q. But you are billed by the Morton Salt Company for the various requirements of your various competitors that are billed through you?

A. Yes.

Q. And do you bill them at $1.50 a case less 8 cents a case, or do you bill them on the net basis, $1.42?

A. I bill them on the $1.50 basis, less 8 cents a case.

Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's exhibit No. 183-A and B?

(The document referred to was marked "Commission's Exhibit 183-A and 183-B" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated between counsel for the respondent and counsel for the Commission that the document marked
2099 for identification as Commission's exhibit No. 183-A and B is a true and correct tabulation of the round package salt sold to various customers of the Morton Salt Company and billed through Draughon-Hall Company of Durham, North Carolina, for the last quarter of 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked Commission's exhibit No. 183-A and B.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 183-A and 183-B" was received in evidence.)

By Mr. Haslett:

Q. Mr. Hall, I hand you now Commission's Exhibit No. 183-A and B, and ask you to state whether or not the names that appear thereon represent the names of various wholesalers that were billed by Draughon-Hall Company for their requirements of Morton's round package blue label salt?

A. Do you want me to read these names off?

Q. No, I am only asking you to state whether or not they are.

A. Yes, they are.

2100 Q. I believe you stated the arrangement was entered into at the instance of the broker and the salesman of the Morton Salt Company?

A. Yes, sir.

Q. Whereby you began to bill various wholesalers in this area of the country for their requirements of the round package salt?

A. Yes, sir.

Q. Does the Draughon-Hall Company of Durham, North Carolina, for its own use, purchase 5,000 cases of Morton's free running salt during any 12 consecutive months' period?

A. No, sir.

Q. What was the purpose of the arrangement whereby you began to bill the various wholesalers for their requirements of Morton's round package blue can salt?

A. In order to be on a competitive basis with the large buyers.

Q. So that you could get the discount and compete with the large buyers?

A. Yes.

Q. And you pooled, then, the purchases of the various wholesalers in order to be eligible for that discount?

A. Yes, sir.

Q. You don't have any single purchaser who is billed by the Draughon-Hall Company for the round package

2101 salt, purchasing 5,000 cases or more for its own use, have you, sir?

A. No, sir.

Q. I believe you stated you purchase Morton's round package salt on a carload basis?

A. No, sir.

Q. I believe you stated that you do purchase Morton's round package and other types of salt on a carload basis?

A. Other types, all-told, I do, yes.

Q. On a carload basis?

A. Yes.

Q. In which the iodized and free running might be a part thereof?

A. Yes, sir.

Q. Do you know approximately the number of cases that Draughon-Hall purchased during the year 1940 for its own use of the round package salt?

A. No, I don't know exactly.

Q. Can you state approximately the number of cases that it purchased for its own use?

A. I imagine around 2,000 cases.

Q. For its own use?

A. Yes, sir.

Q. That would be about the same thing for 1941?

A. Yes, sir.

Q. When the Draughon-Hall Company of Durham, North Carolina, purchases a carload of salt from the Morton Salt Company, does it receive any discount on a carload basis?

A. Yes, there is a small difference in a car and less than carload, but I have never bought less than a carload, so I don't know exactly what that is.

Q. When you purchase in the pool car, you get the same price that you do when you purchase in a full car?

A. Yes.

Q. And you have never bought on a less than carload basis?

A. No, sir.

Q. And there is a difference between the less than carload basis and the carload basis?

A. I think so, yes, because the freight is right smart difference, you see.

Mr. Haslett: Mr. Reporter, will you mark this document for identification as Commission's exhibit No. 184?

(The document referred to was marked "Commission's Exhibit 184" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit No. 184 is an invoice numbered 22055, passing between the Morton Salt Company and the Draughon-Hall Company of Durham, North Carolina, under date of January 6, 1941?

2103 Mr. McBride: That is correct.

Mr. Haslett: I offer the document.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's exhibit No. 184.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 184" was received in evidence.)

By Mr. Haslett:

Q. Mr. Hall, I hand you Commission's exhibit No. 184 and ask you to state whether or not that is typical of the invoices passing between the Morton Salt Company and Draughon-Hall Company for the type of commodities that appear thereon?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's exhibit No. 185.

(The document referred to was marked "Commission's Exhibit 185" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that the document marked for identification as Commission's exhibit No. 185 is a true and correct invoice of the Morton Salt Company, numbered 21432, directed to
2104 the Draughon-Hall Company, Durham, North Carolina, shipped to J. H. Pritchard Company of Winston-Salem, North Carolina, dated January 2, 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Trial Examiner Purcell: Any objection?

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's exhibit No. 185.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 185" was received in evidence.)

By Mr. Haslett:

Q. Mr. Hall, I hand you now Commission's exhibit No. 185, and ask you to state whether or not that document is typical of the invoices passing between the Morton Salt Company and Draughon-Hall Company of Durham, North Carolina, for the type of commodities as shown thereon?

A. Yes.

Q. I hand you Commission's exhibit No. 183-A and B, and ask you to state whether any of the names that appear thereon are competitors of the Draughon-Hall Company?

A. No, sir.

Q. None of the names that appear on Commis-
2105 sion's exhibit 183-A and B are competitors of Draughon-Hall Company?

A. No, sir.

Q. Does the Draughon-Hall Company receive any discount from the Morton Salt Company upon its Triangle table salt purchases?

A. No, sir.

Q. The only discount it receives is the 10 cents on the round package blue can salt?

A. Yes, sir.

Q. I believe you stated, Mr. Hall, that your company sells the commodity to its retailer customers at $1.60 per case?

A. Yes, sir.

Q. What effect would it have on your business if one of your competitors offered to sell Morton's salt at $1.55 a case, while at the same time you were selling it at $1.60 a case?

A. It would hurt our business that much; it would cut our volume down.

Q. It would cut your volume down?

A. Yes.

Q. You would either have to meet the price or lose the business?

A. That is right.

Q. By meeting the price, it would cut down your margin of profit?

2106 A. Yes, sir.

Q. How long has the arrangement been in effect whereby you have been getting 10 cents from the Morton Salt Company on your purchases of the round package salt?

A. Since September, 1938?

Q. September, 1938?

A. Yes, sir.

Q. It is in effect today?

A. Yes.

Q. Has Thomas & Howard Company ever offered to any of your customers, to sell Morton's round package salt at $1.55 a case?

A. Yes.

Q. They have, sir?

A. Yes.

Q. And did you meet that price, or did you pass the business up?

A. I have, in five-case lots.

Q. You have in five-case lots?
A. Yes, sir.
Q. Lowered your price to $1.55 to meet the price of Thomas & Howard?
A. Yes, sir.
Q. How long ago was that, Mr. Hall, if you can remember, sir?
A. It was back several years ago, it has been back
2107 for the past several years.
Q. Did it happen before you began to receive the discounts?
A. Yes, sir.
Q. And it has happened since you have been receiving the discount?
A. Yes, sir.
Q. Has C. D. Kenny Company ever taken any of your business away from you, sir?
A. Yes, they have some.
Q. On the same basis?
A. Yes.
Q. Where they offered it at $1.55?
A. Yes.
Q. And you have lowered your price to meet the C. D. Kenny price?
A. Yes.
Q. Has there been an occasion when the $1.55 price has been quoted to a customer of yours on a lot of less than five cases where you did not meet the price?
A. Yes.
Q. You passed the business up?
A. Yes, sir.
Q. Is it a policy of the Draughon-Hall Company not to meet the price unless the five case quantity is in the deal?
2108 A. Yes.
Q. At the time you did meet the price, your margin of profit was decreased by that amount?
A. Yes.
Q. And the time when you didn't meet the price, where it was less than five cases, you passed the business up, and thereby did not get the business or the order?
A. That is right.
Q. Would your business be in any way affected by the fact that C. D. Kenny Company and Thomas & Howard

received the 5 cent discount on the flat package, 5 cent sale, per case, while at the same time you didn't receive it?

Mr. McBride: I object to that, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

By Mr. Haslett:

Q. You may answer, sir.

A. I have never known, if there was.

Q. If that did occur, would it in any way affect your business?

A. Yes, if they were to cut the price under mine, it would.

Q. What effect would it have upon your business, Mr. Hall, if one of your competitors purchasing from the Morton Salt Company at $1.35, for the round package salt per case, while at the same time you were paying $1.40 a case for it, sir?

Mr. McBride: Same objection.

2109 Trial Examiner Purcell: Objection overruled.

The Witness: I don't know, sir. If he holds his price the same as mine, why, it doesn't affect me any.

By Mr. Haslett:

Q. Is the price at which your company pays for its requirements of the various commodities an important factor in your business?

A. Yes, sir.

Q. And is the price at which your company pays for its salt an important factor in your salt business?

A. Yes, sir.

Q. Then, do you think that the competitor who was paying $1.35 a case for Morton's round package salt, while at the same time you were paying $1.40 a case for it, would be placed in a favorable position?

Mr. McBride: The same objection.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: I don't know, sir. They keep their price about in line with mine, so if they buy it cheaper than I do, of course, I don't know anything about that.

By Mr. Haslett:

Q. I am saying, if that were true, would that in any way affect your business?

A. No, sir, not if they held their price with mine.

2110 Q. You stated that the purchase of your commodities is an important factor in your business, the price that you pay for the various commodities.

A. Yes, sir.

Q. Do you think that one of your competitors who is buying it cheaper than you is placed in a more favorable position than you are, sir?

Mr. McBride: Mr. Examiner, I not only lodge my usual objection, but I now lodge this additional objection: The question has been answered at least twice before. Counsel will have to be content with the witness' answer, rather than try to surround it by constant repetition.

Mr. Haslett: I don't think it is constant repetition at all. I don't think I have asked that question before.

Trial Examiner Purcell: You have asked substantially that. I will permit the witness to answer the question.

Mr. McBride: If the Examiner please, he not only has asked similar questions but he has asked that precise question not more than two feet back on the reporter's notes, and this witness under direct examination, not cross-examination.

Trial Examiner Purcell: I understand that, but it is easier to let the question be answered than it is to argue out the objection. The objection is overruled.

2111 Mr. McBride: Note my exception.

The Witness: Yes, sir.

By Mr. Haslett:

Q. Mr. Hall, I hand you Commission's exhibit 184, and call your particular attention to the 6/10's, that is, the Triangle table salt which was listing at 97½-cents less 12-cents competitive adjustment, which would bring it down to 85½-cents a case.

A. Yes, sir.

Q. Is that the price that you paid for it?

A. Yes, sir.

Q. What effect would that have upon your business if one of your competitors was purchasing that particular brand of salt at the same time that you were purchasing it at 80½-cents per case, while at the same time you were paying 85½-cents a case for it, sir?

Mr. McBride: If the Examiner please, my usual objection, and I repeat the previous objection. The witness has already answered the same question in various forms, that

it did not affect his business unless the resale price of this so-called competitor was below his own. Now, I don't know how long counsel should be permitted to try to shake the witness down on direct examination on the same type of question.

Mr. Haslett: Well, I haven't asked the question 2112 of this witness regarding this particular item, nor am I trying to shake the witness down as to getting an answer that would please me. All I want to do is find out the facts, whether it has any effect upon his business if somebody is buying it cheaper than he is paying for it.

Trial Examiner Purcell: Let's go off the record a second.

(A discussion was had off the record.)

Trial Examiner Purcell: Now, on the record. The objection of counsel for the respondent is overruled on the standing objection, and is overruled on the specific objection, for the reason that the inquiry is being pursued with regard to a different commodity than that covered by the blanket objection, to-wit: Morton's round package salt.

Mr. McBride: Mr. Examiner, I wish to note my exception and reserve my right to appeal on this, and also to the whole procedure of this line of questioning of this witness, in view of the past circumstances with this particular witness.

Mr. Haslett: Now, Mr. Reporter, will you go back and read the question to Mr. Hall, so that he can understand it?

(The question referred to was read by the reporter.)

The Witness: If my competitor was selling it at the same price that I am selling it for, which he is, it 2113 doesn't affect my business any.

By Mr. Haslett:

Q. Do you do any promotional work in connection with the resale of Morton's salt to your retailer customers?

A. No, sir, nothing except we specialize on it now and then. We have definite weeks that we specialize on different items.

Q. Do you ever specialize on Morton salt?

A. Yes.

Q. What do you do when you specialize on it, sir?

A. Nothing except to try to sell it a little stronger, push it.

Q. Do you reduce the price of it, sir?

A. No, sir.
Q. It remains the same price?
A. Yes, sir.
Q. And is that a frequent occurrence?
A. Yes, sir.
Q. How much are you compensated by the Morton Salt Company for that, sir, for the special promotional service that you perform in connection with the resale of the round package salt to your customers?
A. Nothing.
Q. Do you have any retailers connected with your company?
A. No.

Q. Mr. Hall, has there ever been an occurrence since you have had the arrangement with the Morton Salt Company whereby you have been billing the various wholesalers for their requirements of the round package salt, where one of those customers has failed to pay his bill?
2114 A. No, sir.
Q. There has never been such an occurrence?
A. No, sir.
Q. I believe you stated that the business of the various wholesalers whose names appear on Commission's exhibit No. 183-A and B are solicited by the representative of the Morton Salt Company and the orders placed directly with the Morton Salt Company, but are billed through you?
A. Yes, that is correct.
Q. That is, the salesman and broker solicit their business?
A. Yes.
Q. What would happen if one of those purchasers did not pay his bill? Would you be responsible for it, or would the Morton Salt Company be responsible for it, sir?
A. I think I would. I have never had any trouble so far.
Q. You have never had that to arise?
A. No, sir.
Q. So, you don't know just what would be the outcome?
A. No, sir, they try not to sell anyone except those who have credit ratings sufficient to justify the credit.

Q. Do they do the searching of the credit rating?
2115 A. Yes.
Q. And they only bill you for the commodities of various wholesalers who have an approved credit rating by the Morton Salt Company?

A. Well, I don't know about that; I should think so.

Q. This solicitation by the broker and the salesman is done without your knowledge?

A. Yes.

Q. You don't know when they are calling on them and when they are soliciting business?

A. No.

Q. The only thing you know about it, that you bill them for it?

A. Yes, sir.

Q. And you bill on your own billheads?

A. Yes, sir.

Q. Have you on occasions sold the Morton round package salt at $1.50 a case to some of your competitors?

A. No, sir.

Q. You have never sold any at $1.50?

A. No, sir.

Q. The only time that you have sold it for less than $1.60 was when you met the competition of C. D. Kenny and Thomas & Howard?

A. Yes.

2116 Q. And that had happened prior to the time that you got your 10-cents from the Morton Salt Company, and since that time, sir?

A. Yes, sir.

Mr. Haslett: I think that is all. Your witness, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Do I understand correctly, Mr. Hall, from your testimony, that the purchase price of any so-called competitor of yours has no bearing on your business, but rather, the resale price of the competitor of yours that would be considered by you, is that correct?

A. Yes.

Q. In other words, if any competitor sold at the same price or above you, why, that would be the gauge whereby you could determine to some degree your own prices, is that correct?

A. Yes, sir.

Q. That would be true of any item of salt, whether blue package or any other type of salt that you handle from the Morton Salt Company?

A. Yes, sir.

Mr. McBride: I believe that is all.

Mr. Haslett: That is all, Mr. Hall, thank you very much for coming.

2117 (Witness excused.)

Mr. Haslett: I will call as my next witness, Mr. Hinsdale.

DALLAS EUGENE HINSDALE was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Hinsdale?

A. Dallas Eugene.

Q. And do you reside in Winston-Salem, North Carolina, sir?

A. Yes, sir.

Q. In what business are you engaged, sir?

A. Manager of the Grocery Supply Company.

Q. And what is the Grocery Supply Company?

A. It is a wholesale grocery.

Q. It sells groceries and allied products to the retailer stores?

A. Yes, sir.

Q. And is it a branch of any particular organization?

A. You mean, a chain?

Q. Is it a wholesale branch of any particular organization?

A. No, sir.

2118 Q. Is it a corporation?

A. Yes, sir.

Q. Incorporated under the laws of what state, sir?

A. North Carolina.

Q. And where is its principal office?

A. 220 South Liberty Street, in this city.

Q. In Winston-Salem?

A. Yes.

Q. You say you are the manager of the Grocery Supply Company here in Winston-Salem?

A. Yes, sir.

Q. And as manager of the company, you have charge

of the purchasing of the various commodities that are resold by your company to the retail stores?

A. Yes, sir.

Q. And will you state what territory your company does business in?

A. Just in Winston-Salem and around it.

Q. In and around Winston-Salem?

A. Yes.

Q. Has your company any competitors?

A. Yes, sir.

Q. Would you name some of them?

A. Well, I would say all of the balance of the jobbers here in town, and the ones that work in here from out of town.

2119 Q. Would you name some of them, please? Is Thomas & Howard a competitor of yours, sir?

A. Yes.

Q. And C. D. Kenny Company?

A. Yes.

Q. J. W. Smitherman?

A. Yes.

Q. Are there any others?

A. Well, you mean some other jobbers in town?

Q. Yes.

A. Forrest-Rhodes Company, and Phillip Stone & Company.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Well, we handle mostly the round package.

Q. That is, the plain and iodized free running salt?

A. Yes, sir. We don't handle much of the other packages.

Q. How are orders placed by your company with the Morton Salt Company for its requirements of salt?

A. Usually to their salesman.

Q. The salesman calls upon you?

A. Yes, sir.

2120 Q. And you give him orders?

A. Yes, sir.

Q. And as a result of which, the commodities are shipped to you by the Morton Salt Company?

A. Yes, sir.

Q. And are they shipped in pool cars?

A. Yes, sir.

Q. Do you ever buy a full car? Do you ever buy them on a full carload basis?

A. No, sir.

Q. Just in pool cars?

A. Yes, sir.

Q. Do you know the price which your company pays the Morton Salt Company for its round package salt, per case?

A. $1.50

Q. And has that price been in effect for several years?

A. Yes, sir.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. No, sir.

Q. Does it get any discount on the $1.50 per case of blue package salt?

A. No, sir.

Q. Do you know approximately the number of cases that your company purchases from the Morton Salt Com-
2121 pany on the blue package salt per year?

A. Well, I would say around 300.

Q. Around 300 cases per year?

A. That would be close.

Q. And it has been about the same for the past several years?

A. I would think so, yes.

Mr. Haslett: Mr. McBride, is it stipulated between counsel representing the respondent herein and counsel for the Commission that invoices similar to and identical with Commission's exhibit No. 52, except as to the quantity of the product, date, number of the invoice, consignee and destination, have passed between the respondent, Morton Salt Company, and Grocery Supply Company, Winston-Salem, North Carolina, who is a customer of the respondent, Morton Salt Company, and that said Commission's exhibit No. 52 is typical of such invoices for the sale of salt of the same type that appears thereon that pass between the respondent herein and its customer, Grocery Supply Company, Winston-Salem, North Carolina, and

that such invoices have in the regular course of the respondent's business passed between the respondent and its said customer, the Grocery Supply Company of Winston-Salem, North Carolina, since the respondent began the sale of, and the said customer, Grocery Supply Company, of Winston-Salem, North Carolina, began the purchase of the type of products as appear on Commission's exhibit No. 52?

2122 Mr. McBride: It is so stipulated.

By Mr. Haslett:

Q. What is the price that your company sells the round package salt to the retailer customers for?

A. $1.56.

Q. $1.56 per case?

A. Yes.

Q. Are there any retail stores connected with your company?

A. Well, some of them have stock in it.

Q. Some of the retail stores have stock in your company?

A. Yes.

Q. And what is the name of the retail stores?

A. Well, they are independent merchants.

Q. Operating under their own name?

A. Yes.

Q. And do you sell to any other customers other than your stockholders?

A. Yes.

Q. You sell to the general retail business?

A. Yes, sir.

Q. Do you sell at $1.56 to all of your customers for the round package salt?

A. Not only the stockholders, but others, yes.

Q. How long has the $1.56 price been in effect, sir?

A. Well, we work on a percentage, and we change
2123 it every once in a while.

Q. You say you work on a percentage?

A. Yes, sir.

Q. And you change it every once in a while?

A. Yes.

Q. Do you base your percentage upon your purchase price?

A. That is right.

Q. When was the last change, do you know, sir?
A. The first of April.
Q. Of 1942?
A. Yes.
Q. Do you know the price at which you were selling the round package salt per case to your customers prior to the first of April, 1942?
A. During March, it was $1.57½.
Q. $1.57½?
A. Yes, sir.
Q. And you reduced the price 1½ cents the first of April?
A. Yes, sir.
Q. Why did you do that, sir?
A. Well, like I say, we work on a certain mark-up, on a percentage, and so we change it during March.
Q. And it went into effect the first of April?
A. Yes.
Q. What effect would it have on your business, Mr. Hinsdale, if one of your competitors offered to sell Morton's round package at $1.52 a case, while at the same time you were charging $1.56 a case for it, sir?
A. We would lose the business.
Q. You would lose the business?
A. Yes, sir.
Q. You wouldn't meet the price?
A. No, sir. We couldn't meet it as long as our cost was $1.50.
Q. Is your business in any way affected by the fact that some of your competitors pay $1.42 a case for Morton's salt, while at the same time you are paying $1.50 a case for it, sir?
Mr. McBride: My usual objection, Mr. Examiner.
Trial Examiner Purcell: Objection overruled. You may answer.
The Witness: Well, I don't know hardly what to say in a case of that kind.

By Mr. Haslett:
Q. Can you answer the question?
A. I would say it wouldn't affect it as long as they didn't undersell us.
Q. As long as they didn't undersell you?
A. Yes.
Q. Do you think that the company or the com-

2125 petitor who is purchasing it for $1.42 is in a favorable position?

Mr. McBride: Same objection.

Trial Examiner Purcell: Objection overruled.

The Witness: Yes, sir.

By Mr. Haslett:

Q. His margin of profit would be greater than yours?

A. Yes, sir.

Q. Is the price which your competitor sells its salt given consideration by your company in determining the price at which it is going to sell its salt products?

A. Will you repeat that, please?

Mr. Haslett: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: No, sir.

By Mr. Haslett:

Q. You don't meet the competition?

A. No, sir.

Q. You just sell it at your stated price?

A. That is right.

Q. Why is that done, sir?

A. I beg your pardon?

Q. Why is that done?

A. Well, we just have a certain rule we go by, and we stick to it.

Q. If one of your competitors offered it at a lower

2126 price, you wouldn't meet the price at all?

A. No, sir.

Q. You would pass the business up?

A. Yes, sir.

Q. Do you know of any instance where you have lost business to any of your competitors on Morton's round package blue label salt?

A. No, sir.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. Do you know of anybody in Winston-Salem offering Morton's blue package for $1.52 a case?

A. No, sir.

Q. As I understand your theory of the percentage mark-up, is that applicable to all of the commodities that your company handles, is that correct?

A. Yes.

Q. Your theory of merchandising as just described is applicable to all commodities, including salt products?

A. That is right.

Mr. McBride: I think that is all.

Mr. Haslett: Thank you very much, Mr. Hinsdale, for coming.

(Witness excused.)

2127 Trial Examiner Purcell: We will take a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Recess is over.

Mr. Haslett: Mr. Smitherman, come around, please.

J. W. SMITHERMAN was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you kindly state your full name for the record, Mr. Smitherman?

A. J. W. Smitherman.

Q. And where do you reside, sir?

A. 212 South Liberty Street, J. W. Smitherman Company.

Q. You live in Winston-Salem?

A. Yes, I live at 894 Linwood Avenue.

Q. And that is in Winston-Salem?

A. Yes.

Q. And in what business are you engaged?

A. Wholesale groceries.

Q. And with what company are you connected, sir?

A. J. W. Smitherman Company.

Q. And is that a corporation?

2128 A. Yes, sir.

Q. Incorporated under the laws of what state?

A. North Carolina.

Q. What position do you hold with the company?

A. Well, I am manager of the company.

Q. Manager of the company?

A. Yes.

Q. And how long have you been manager?

A. Since 1929.
Q. Since 1929?
A. Yes.
Q. And what is the business of the J. W. Smitherman Company?
A. I beg your pardon, 1919 instead of 1929. We were incorporated in 1919.
Q. And you have been manager since the corporation was formed?
A. Yes.
Q. And what is the business of the J. W. Smitherman Company?
A. Well, it is wholesale groceries and kindred lines.
Q. It sells groceries and allied products to retailer stores?
A. Yes, sir.
Q. Does it do any retail business at all?
A. No, sir.
Q. What territory is covered geographically by your company?
2129 A. Well, Forsyth County, and part of Yadkin County, and part of Davie County, part of Davidson, a small part of Forsyth, and I believe that is our boundary.
Q. Is that within a radius of 20 miles?
A. It is within a radius of thirty miles, I will say.
Q. Has the J. W. Smitherman Company any competitors?
A. Oh, yes, a lot of them.
Q. Will you name some of them, please?
A. Well, I will say Phillip Stone & Company, C. D. Kenny Company, Forrest-Rhodes, Fagg & Son, N. P. Stone & Company, Thomas & Howard out of Salisbury, J. G. Messick & Son, Winston-Salem.
Q. I think that is sufficient, Mr. Smitherman.
A. I think that is the biggest part of them anyway.
Q. Does your company handle salt?
A. Yes.
Q. Does it make any purchases from the Morton Salt Company?
A. Well, it makes purchases from the Morton Salt Company's representative through the Draughon-Hall Company of Durham.
Q. Is that on the round package salt?
A. That is on the round package salt, that is the only package we handle of Morton's.

Q. Well, did you ever handle the 36/1½'s, in the 5-cent salt?

A. We have in some years past, yes.

2130 Q. And when you were handling the 36/1½'s in the table salt, did you place your orders directly with the Morton Salt Company?

A. Yes, sir.

Q. And you were billed by the Morton Salt Company?

A. Yes, sir.

Q. How long have you been receiving your billings for your requirements of salt from the Morton Salt Company by the way of Draughon-Hall of Durham, North Carolina?

A. Well, I don't remember the first date that we bought through them, but I will say about three years.

Q. About three years?

A. Yes.

Q. Prior to that time—

A. I might miss that, but as far as I remember, about three years.

Q. Prior to that time, Mr. Smitherman, did your company purchase the round package salt direct from the Morton Salt Company?

A. Yes, sir.

Q. And you were billed direct from the Morton Salt Company?

A. Yes, sir.

Q. It still makes its purchases from the Morton Salt Company through the Morton Salt Company's salesman that calls upon you?

2131 A. Yes, sir.

Q. And does the broker also call upon you?

A. Well, yes, the broker is usually with the salesman.

Q. And they call upon you and solicit orders for Morton's products?

A. That is right.

Q. As a result of which, commodities are shipped to you by the Morton Salt Company?

A. Yes, sir.

Q. And then you are billed by Draughon-Hall?

A. That is right.

Q. What brought about the arrangement whereby you began to be billed for the round package salt from the Morton Salt Company through Draughon-Hall?

A. Well, at that time, when we were paying $1.50 for it, we were getting $1.75, and it was being sold at $1.65, so

we asked the salesman why we couldn't sell it as cheap as the other fellow, and he said we could if we would buy it through Draughon-Hall.

Q. That was the salesman for the Morton Salt Company?

A. Yes.

Q. And you began then, as a result of that, to be billed by the Draughon-Hall Company?

A. That is right, and immediately reduced our price to $1.65.

2132 Q. And you reduced your selling price to $1.65?

A. That is right.

Q. Now, what was the price that you were paying for it prior to the time that you began to receive billings through Draughon-Hall?

A. $1.50.

Q. And what was the price that you began to pay for it when you were billed by Draughon-Hall?

A. $1.42.

Q. $1.42?

A. Yes.

Q. Has the $1.42 price been in effect since the time that you began receiving your bills through Draughon-Hall, sir?

A. It seems to me, I am not sure, that we got the first lot or two at $1.40, and then it was later $1.42. I am not positive on that, but that is the way I remember it.

Q. But it is $1.42 now?

A. Yes, sir.

Q. And has been for quite a number of years?

A. That is right.

Q. When you began to receive the $1.42 price, you lowered your resale price to $1.65?

A. That is right.

Q. Why did you do that?

A. To meet competition.

2133 Q. Of whom?

A. Well, of some of those fellows that I just named, for instance, C. D. Kenny and Thomas & Howard.

Q. They were selling it at $1.65?

A. That is the way I remember it, yes.

Q. I believe you stated that at the present time your company is only purchasing the round package salt from the Morton Salt Company?

A. That is right.

Q. When did you stop purchasing the 36/1¼ flat packaged salt, known as 5-cent salt in the trade?

A. Well, I will say three years.

Q. Why did you stop purchasing that from the Morton Salt Company, that particular type?

A. Well, we took on the Diamond Crystal brand exclusive for Winston-Salem, thinking maybe we could get a little profit on it. At that time, our competitors were beating us so far as price was concerned.

Q. On the flat package salt?

A. Yes.

Q. And what do you mean by your competitors were beating you?

A. Well, they were selling it for five to ten-cents a case less than we were.

Q. Do you know the names of the competitors that
2134 were selling it at that price?

A. Well, we had more trouble with C. D. Kenny and Thomas & Howard than anybody else.

Q. They were sellnig it cheaper, and that is why you gave up that line from the Morton Salt Company?

A. That is right.

Q. Since that time, you haven't purchased any of the 36/1¼'s from the Morton Salt Company?

A. Not from Morton, no, but we have been purchasing it all along from the Diamond Crystal Salt Company.

Q. Is the price which your company pays for its requirements of salt an important factor in your business?

A. Yes.

Q. And is the price at which your competitors sell their commodities given consideration by your company in determining the price at which it is going to sell its salt products?

A. I would say it was.

Q. Prior to the time that you lowered your price on the round package salt from $1.75 to $1.65, what effect would it have upon your business at that time if one of your competitors was selling it at $1.65, while at the same time you were selling it at $1.75?

A. We would lose the business.

Q. You would either have to lower your price or lose the business?

2135 A. That is right.

Q. What effect would it have upon your business

by the fact that some of your competitors were purchasing it at $1.40 a case, while at the same time you were purchasing it for $1.50 a case, for the round package salt?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer, sir.

The Witness: Well, it would enable them to sell it cheaper than we could, and it would have its effect.

By Mr. Haslett:

Q. Would it be an adverse effect?

A. Yes, sir.

Q. The favored customer who was getting it at $1.40 would also be in a position, whether he used the lower price or not, to cut th price, and thereby you would be at the mercy of the one who received the lower price?

Mr. McBride: If the Examiner please, I will object to that as a decidedly leading question to this witness, and ask that the answer be stricken.

Mr. Haslett: I can reframe the question, if you like.

Mr. McBride: It has at least a half a dozen elements wrapped up in one question.

Trial Examiner Purcell: No, there is just the one 2136 element that you could possibly object to. I will overrule the objection and allow you an exception.

Mr. McBride: If the Examiner please, I would like to have him read back that question and see the way in which counsel has framed it. It goes far beyond my usual objection.

Trial Examiner Purcell: You may read the question back. There is no usual objection to that question, this is the first time it has been propounded.

(The question referred to was read by the reporter.)

Mr. McBride: It is quite obvious that there are a number of elements, and then a leading question, and I object to counsel being permitted to propound that type of question to his own witness.

Trial Examiner Purcell: I will let the ruling stand.

The Witness: That is right.

By Mr. Haslett:

Q. Mr. Smitherman, I believe at the present time you are getting an 8-cent allowance on your purchases of Morton salt?

A. That is right.

Q. What effect would it have upon your business if Thomas & Howard or C. D. Kenny were purchasing that salt at $1.35 a case, while at the same time you were paying $1.42 a case for it, sir?

Mr. McBride: My usual objection.

2137 Trial Examiner Purcell: Objection overruled.

The Witness: Well, I think it would put them in a position to undersell us if they so desired, and if they didn't undersell us, I don't know whether we could survive on a less profit than they were getting or not.

By Mr. Haslett:

Q. The threat of underselling would always be there?

A. Yes.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 186.

(The document referred to was marked "Commission's Exhibit 186" for identification.)

By Mr. Haslett:

Q. Mr. Smitherman, I hand you what has been marked for identification as Commission's exhibit No. 186, and ask you to state what that is, if you know, sir?

A. Do you mean—

Q. Is it an invoice from Draughon-Hall?

A. Yes, that is an invoice from Draughon-Hall.

Q. Has it a date, sir?

A. August 12, 1941.

Q. And is it directed to your company?

A. It is, sir, J. W. Smitherman Company.

Q. Winston-Salem, North Carolina?

2138 A. That is right.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's exhibit No. 186.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 186" was received in evidence.)

By Mr. Haslett:

Q. Mr. Smitherman, I hand you now what has been marked and admitted in evidence as Commission's exhibit

No. 186, and ask you to state whether or not that is a typical invoice passing between Draughon-Hall and your company for the type of commodities as shown thereon?

A. It is.

Mr. Haslett: Mr. Reporter, I hand you another document and ask that it be marked for identification as Commission's exhibit No. 187.

(The document referred to was marked "Commission's Exhibit 187" for identification.)

Mr. Haslett: It is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit No. 187 is an invoice from the Morton Salt Company, num-
2139 bered 4584, directed to J. W. Smitherman, Winston-Salem, North Carolina, under date of August 31, 1937.

Mr. McBride: It is so stipulated.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's exhibit No. 187.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 187" was received in evidence.)

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's exhibit No. 188.

(The document referred to was marked "Commission's Exhibit 188" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's exhibit No. 188 is an invoice passing between the Morton Salt Company and J. W. Smitherman, numbered 96035, dated July 1, 1937?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, Mr. Examiner.

Mr. McBride: No objection.

2140 Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the reporter as Commission's exhibit No. 188.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 188" was received in evidence.)

By Mr. Haslett:

Q. Mr. Smitherman, I hand you a document which has been marked and admitted in evidence as Commission's exhibit No. 188, and ask you to state whether or not that is typical of the invoices that passed between the Morton Salt Company and the J. W. Smitherman Company in Winston-Salem, North Carolina, around July 1st of 1937, for the type of commodities shown thereon?

A. That is right.

Q. And that the document marked and admitted into evidence as Commission's exhibit No. 187 is a typical invoice passing between the Morton Salt Company and J. W. Smitherman Company, Winston-Salem, North Carolina, under date of August 31, 1937, for the type of commodities that appear thereon?

A. That is right.

Q. Mr. Smitherman, does your company purchase 5,000 cases of free running salt from the Morton Salt Company during any 12 consecutive months' period?

A. No, sir.

2141 Q. Has it ever purchased that amount?

A. No, sir, it never has.

Q. Do you know the approximate number of cases that your company purchases from the Morton Salt Company of the round package salt, during any 12 consecutive months' period?

A. Well, I haven't figured that out, but I would guess it would be about 600 cases a year.

Q. About 600 cases a year?

A. Yes, sir.

Q. And have those figures been about the same for the past several years?

A. Yes, sir. As well as I remember, they usually make up a car about once a month, and we usually get 50 cases in a car.

Q. Now, Mr. Smitherman, when the orders placed by your company for its requirements of Morton salt are solicited by the salesman and the broker, as a result of those orders, are the commodities shipped to you directly in a pool car with other wholesalers here in Winston-Salem?

A. Yes, sir.

Q. And where is the car put, sir?

A. It is usually put on the southbound track on Liberty Street Annex.

Q. Liberty Street Annex?

A. Yes.

2142 Q. Whose annex?

A. Well, that is a street opened up a short ways directly behind Liberty Street.

Q. Oh, I see, it is an annex to Liberty Street?

A. That is right.

Q. And is that near your place of business?

A. Yes.

Q. How close is it?

A. Well, it is right back of our place.

Q. And does your truck haul it.

A. We usually have to haul it out of the car. It is not placed at our platform.

Q. It is not placed on your siding?

A. No, sir.

Q. And is it on the siding of any particular competitor of yours?

A. Well, I don't know just where it is placed. They notify us it is in the car, but it is not on a very long track there. There is, I will say, 300 feet of track for platform sidings.

Q. And your truck hauls it from that siding to your warehouse?

A. That is right.

Q. You are not compensated by Morton Salt Company for that cartage, are you, sir?

A. No.

2143 Q. Now, at the time that you were purchasing the flat 36/1½'s from the Morton Salt Company, I believe you testified it was two or three years ago?

A. Yes.

Q. What effect would it have had upon your business if one of your competitors was selling that salt at 5-cents a case less than the price that you were charging for it, sir?

A. Well, it would have a bad effect.

Q. A bad effect upon your business?

A. Yes.

Q. And what effect would it have if he was purchasing it at 5-cents a case less than the price that you were paying for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled.

The Witness: Well, I don't know just how to answer that, but I would say that your competitor that was purchasing it for 5-cents a case less than we were, he would have the whip over us.

By Mr. Haslett:

Q. On the price?

A. Yes.

Q. Did you at any time in the last five years ever purchase salt from the Morton Salt Company on a carload basis, that is, a full car of salt?

2144 A. I don't think so. I don't remember it if we did. We were in pool cars.

Q. Have you any retail stores associated with your company, sir?

A. No, sir, none at all.

Q. Do you do any promotional or advertising work in connection with the resale of Morton's salt to the retailer customers?

A. No, sir.

Q. You say the arrangement whereby you began to be billed through Draughon-Hall for your requirements of Morton salt, was done at the instance of the broker and the salesman?

A. Yes.

Q. And the reason for it was the lower price?

A. That is right.

Mr. Haslett: I think that is all, Mr. McBride.

Cross-Examination by Mr. McBride.

Q. Mr. Smitherman, I believe you stated that your company had been in existence since 1919, is that correct?

A. I think that is right, yes.

Q. Have you conducted the same line of business here in Winston-Salem at all times since that date?

A. Yes, sir.

Q. Do you know whether or not, Mr. Smitherman,
2145 your company has made more profit than all of the other wholesalers in Winston-Salem during that period?

Mr. Haslett: I object to that.

Trial Examiner Purcell: Off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. At the request of counsel, the Examiner grants counsel for the respondent permission to go on the record with his statement in support of the preceding question.

Mr. McBride: In answer to one of Mr. Haslett's questions in which Mr. Haslett was trying to develop a larger margin of profit on the part of the so-called competitor of this witness' company, and to determine what the effect would be on this witness in his business, the witness made the statement that if his competitor, as he described him, made a larger profit, that he would have to go out of business, and I wish to establish the fact that that can't possibly be true. I am entitled to go into that question.

Trial Examiner Purcell: If my memory serves me, you are in error about that statement, Mr. McBride. I don't think the witness testified to any such thing as that.

Mr. McBride: He said he couldn't stay in business as long as he made less profit than his competitor. Those are his exact words.

Trial Examiner Purcell: I don't recall that to be 2146 the fact.

Mr. McBride: I jotted it down, and I wish to get at that problem.

Trial Examiner Purcell: In light of that statement, I am going to ask the reporter to go back to that portion of the record and read it.

(The question and answer referred to were read by the reporter, as follows:

"By Mr. Haslett:

"Q. What effect would it have upon your business if Thomas & Howard or C. D. Kenny Company were purchasing that salt at $1.35 a case, while at the same time you were paying $1.42 a case for it, sir?

"Mr. McBride: My usual objection.

"Trial Examiner Purcell: Objection overruled.

"The Witness: Well, I think it would put them in a position to undersell us if they so desired, and if they didn't undersell us, I don't know whether we could survive on a less profit than they were getting or not.")

Mr. McBride: I don't want that inference left on the record that he thinks his survival is predicated on the amount of "profit" that his competitors are making, and I am entitled to explore that proposition.

Trial Examiner Purcell: I don't think that is a
2147 fair inference to take on your part from the answer of the witness.

Mr. McBride: Then, why would he otherwise make any statement about survival?

Trial Examiner Purcell: He said he doesn't know whether he could survive.

Mr. McBride: Certainly, that is exactly the inference that is left open, he doesn't see how he could survive if somebody makes more profit.

Trial Examiner Purcell: There is an objection pending before me?

Mr. Haslett: That is right, sir. If there is any doubt in the Examiner's mind, I would like to be heard.

Trial Examiner Purcell: I wish you would put your reasons on the record, because Mr. McBride has done the same thing.

Mr. Haslett: I would like for the Examiner to listen to the question. He is asking whether or not this witness has not made more profit than any other company in Winston-Salem, which would be a way beyond the scope of direct examination, and having this witness to testify to such things in front of his competitors and on a public record, I think is highly prejudicial, and I strenuously force my objection.

Trial Examiner Purcell: Not only on the grounds
2148 that you state is the question objectionable, but it is objectionable from a number of other points of view, as the Examiner sees it. I am going to sustain the objection.

By Mr. McBride:

Q. Mr. Smitherman, do you have less mark-up on all of the commodities that you sell than all of the rest of your competitors in Winston-Salem?

Mr. Haslett: I object to that.

Mr. McBride: I urge that question for the same grounds, Mr. Examiner. I just don't propose to let the inference stand on the record, and I will just have to keep repeating questions from different angles until I get at the answer.

Mr. Haslett: If counsel takes the position that he is going to continue to ask questions in flagrant violation of the Examiner's rulings, I intend to object to them constantly, and we will be here until dooms day.

Trial Examiner Purcell: The Examiner, Mr. Haslett, will

take care of himself in that particular. The objection is sustained.

Mr. McBride: With respect to these rulings, I would like to have my reservation to take the matter up with the Commission.

Trial Examiner Purcell: You may have your reservation.

2149 By Mr. McBride:

Q. Now, with respect to salt commodities that you handle, Mr. Smitherman, is your mark-up less on salt commodities than all of your competitors here in Winston-Salem, of all types?

A. I don't think so.

Mr. Haslett: Mr. Examiner, I am going to object to this line of testimony, and ask that counsel be instructed to cease this line of examination. The Examiner has ruled on the question, and a constant effort to get the answer in the record by a round-about way is nothing but an evasion of the Examiner's rulings, and I strenuously object to it, sir.

Mr. McBride: I am not trying to be round-about in the manner of doing it. I am making it very clear what I am trying to do.

Trial Examiner Purcell: No one can accuse you of being round-about. I think you are being very direct, Mr. McBride, and I will agree with you on that.

Mr. Witness, do you know of your own personal knowledge as to the respective mark-ups of all of the various people who are in competition with you in this territory?

The Witness: No, sir.

Trial Examiner Purcell: You do not?

The Witness: No.

2150 Trial Examiner Purcell: Then, I shall rule, Mr. McBride, that any question directed to that end is improper, because the witness has testified he has no knowledge.

Mr. McBride: If the Examiner please, with one more question, and I ask that by way of an anticipatory ruling on this same line of questioning be proper in view of the Examiner's question, namely, this question: Then, it would be possible for the mark-up of the competitors of this witness to be greater or less, so far as he knows, than his own mark-up, which is simply by way of variation of the question just propounded by the Examiner.

Trial Examiner Purcell: It is not my habit, Mr. McBride, to make an anticipatory ruling. I think it is not only improper, but dangerous, for obvious reasons.

You propound your question and let it be subject to the objection of the opposing counsel, and we will see where we get.

By Mr. McBride:

Q. Then, Mr. Smitherman, in the light of your answer to the Examiner's question, so far as you know, the margin of mark-up of your competitors here in Winston-Salem on any items might be greater or less than that of your company on the items that you handle in competition with those companies, is that correct?

A. Well,—

2151 Q. I mean, just so far as you know?

A. So far as I know. I don't know all of the mark-ups.

Q. So, it might be greater or less than your own, is that correct?

A. Yes.

Q. And that would be true with respect to the salt items, as well as with respect to any other items that you handle?

A. Yes.

Q. And I take it that it is possible that your mark-up on salt items and other items during a period of years may have been less than some of your competitors, so far as you know, is that correct?

Mr. Haslett: I object to that.

Mr. McBride: Now, if the Examiner please,—

Trial Examiner Purcell: Just one second, please. Read back the question, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Purcell: Objection overruled, Mr. Haslett.

The Witness: I don't think that our price has been less than our competitors'.

By Mr. McBride:

Q. No, I mean the margin of mark-up over your cost, Mr. Smitherman. I am not referring to your price to your retail trade. I am referring to the margin of mark-

2152 up over your cost.

Trial Examiner Purcell: Go back, Mr. Reporter, if you please, and read the question to the witness.

(The question referred to was read by the reporter.)

The Witness: I don't think so.

By Mr. McBride:

Q. Or it may have been more, or the same, is that correct?

A. Yes.

Q. Then, if I understand you correctly, Mr. Smitherman, if you received the mark-up that you prefer to place on salt and other commodities, you can stay in business so long as you have that mark-up, regardless of what the mark-up may be of your competitors with respect to salt or any other commodities, is that correct?

Mr. Haslett: I object to that.

Trial Examiner Purcell: Let's go off the record.

(A discussion was had off the record.)

Trial Examiner Purcell: On the record. The objection is overruled, for the reasons stated off the record.

Mr. Haslett: Note my exception.

Trial Examiner Purcell: Now, put the question to the witness, or read the question back, Mr. Reporter.

(The question referred to was re-read by the reporter.)

The Witness: Well, I will say it is correct, if I
2153 can receive them, but I don't think I can receive them.

By Mr. McBride:

Q. Well, then, Mr. Smitherman, supposing, now, using the figures that you have testified to, that you are offering salt for $1.65 a case, I believe that is your current price, is it not?

A. Yes.

Q. Supposing one of your competitors also was offering the same salt, referring now to the blue can, at $1.65, it wouldn't make much difference to you, would it, what that competitor paid for his salt?

A. No.

Q. Even though the margin of mark-up between his cost and the $1.65 was greater than the margin of mark-up between your cost and $1.65, is that right?

A. If I was receiving my price, if I was able to get my price, I wouldn't think it would make any difference what his cost was.

Q. I take it that so long as you have the same price as this competitor that we are talking about, in the abstract right now, where both of you have $1.65, as you have stated, you are on an even basis, and it is just a question of salesmanship from there out, is that right?

A. Yes, that is right. I did say that he would have the whip over me.

2154 Q. Then, what you are in effect saying, is, that he might use the whip in some way that you wouldn't like, is that right?

A. Yes, that is right.

Q. But if the whip weren't used, you wouldn't object?

A. I wouldn't object.

Q. I think you stated, Mr. Smitherman, that some three or four years ago you abandoned the purchase of Morton's 36/1½ square package salt?

A. Yes, sir.

Q. What brand was that that you were purchasing then?

A. I am not sure, but I think it was Rock Crystal, or something like that.

Q. I show you Commission's exhibit No. 188 and ask you if that is the type that you have reference to?

A. That is it, Rock Crystal.

Q. Rock Crystal salt, as shown on that exhibit?

A. Yes.

Q. And I think you stated, also, that at the time you abandoned the purchase of Rock Crystal salt, 36/1½ pound square packages, from the Morton Salt Company, that you took on the Diamond Crystal flat package line?

A. Yes.

Q. In fact, you took on a full Diamond Crystal line and became the exclusive distributor here in Winston-Salem, is that right?

2155 A. Yes, that is right.

Q. And I believe you also stated that the reason for abandoning the purchase of Morton's Rock Crystal salt packages was because you found that your competition, I believe you named Thomas & Howard and C. D. Kenny, were selling square packages for less than you were willing to sell them for, is that right?

A. That is right.

Q. Now, the square packages that were being offered by Thomas & Howard and C. D. Kenny at that time were not Morton's square packages, were they?

A. Yes.

Q. What year was that?

A. Well, I don't remember the year that we quit handling it.

Q. You don't know whether Thomas & Howard at the time that you quit, without knowing quite the date, were then handling Rock Crystal salt purchased from the Morton Salt Company, packaged in 36/1½ pound packages?

A. As far as I remember, they were.

Q. Do you know whether C. D. Kenny was handling the Rock Crystal salt of the same description at that time?

A. As far as I remember, they were.

Q. Do you know what their sales price was?

A. I don't remember.

Q. Do you recall what your sales price was?

2156 A. I don't remember.

Q. And I take it, in view of your other testimony, that you don't know what the cost of that package was to either Thomas & Howard or C. D. Kenny Company, is that right?

A. I would have no way of knowing.

Q. Now at the time you abandoned the purchase of Morton's Rock Crystal salt in the package described, there were also 1½ pound flat packages being offered which were made by other producers than Morton Salt Company, is that right?

A. That is right.

Q. Do you know whether or not Thomas & Howard Company handled the 1½ pound flat packages of other producers at that same time that you were handling the purchase of Morton's flat package?

A. I don't know whether they did at that same time or not.

Q. Do you recall that they have handled other flat packages from time to time?

A. Yes, sir.

Q. Do you recall whose product that was, International or Carey's, or whose?

A. I remember one time Thomas & Howard handled International.

Q. Had they ever handled anybody else's flat packages, if you know?

A. I don't remember.

Q. How about C. D. Kenny Company?

2157 A. I don't remember about them.

Q. You don't remember?

A. No, sir.

Q. As I understand it, you don't recall the date that you ceased to purchase Morton's flat package, other than the estimate of some four or five years ago, is that right?

A. That is right.

Q. At the time you ceased purchasing Morton's flat package of Rock Crystal, do you recall what you were paying the Morton Salt Company for it at that time, that is, the 36/1¼ pound packages?

A. I don't recall.

Q. And when you switched to the Diamond Crystal flat package, were you able to purchase proportionately the same type of package for less money than what you were paying the Morton Salt Company?

A. No.

Q. The same price?

A. The same price.

Q. And did you offer Diamond Crystal flat packages at the same resale price to the retailer trade as you had previously been offering Rock Crystal?

A. Well, I don't remember that.

Q. Now, if you paid the same price, wherein would that give you any advantage to meet this competition that
2158 you described from Thomas & Howard and C. D. Kenny Company?

A. Nothing more than a different brand.

Q. So that you simply thought by getting the advantage of a different brand without getting the advantage of a different price, that you would thereby be better enabled to meet competition, is that right?

A. Yes, sir.

Mr. McBride: I think that is all, Mr. Smitherman.

Redirect Examination by Mr. Haslett.

Q. Mr. Smitherman, you testified in answer to one of Mr. McBride's quest . . that . . one of your competitors was purchasing Morton's salt at a lower price than you, and both of you selling it at the same price, it would not affect your business. The potential whip of the lower price would always be over your head, and the competitor could use that at any time he wanted to and reduce the price to your detriment, could he not, sir?

A. Yes, sir.

Q. He could sell it below the cost at which you were paying for it, and still make a profit on it, sir?

A. That is right.

Mr. Haslett: I think that is all.

Recross Examination by Mr. McBride.

2159 Q. You have had a lot of potential whips over your head, haven't you, Mr. Smitherman, since 1919?

A. Well, I don't know.

Q. You don't know whether you have had any or not, is that right?

A. No, sir, I don't.

Q. But I take it your company has survived pretty well, hasn't it?

A. Well, not so very well.

Q. You are still in business?

A. Yes.

Mr. McBride: I think that is all.

Mr. Haslett: Thank you very much, Mr. Smitherman, for coming.

(Witness excused.)

Mr. Haslett: I will now call Mr. J. G. Massick.

J. G. MASSICK was thereupon called as a witness for the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you state your full name for the record, please?

A. J. G. Massick.

Q. Where do you reside, sir?

2160 A. 612 North Clayton Avenue.

Q. Is that in Winston-Salem?

A. Yes.

Q. And in what business are you engaged?

A. Wholesale grocery business.

Q. And with what company are you connected, sir?

A. J. G. Massick & Sons.

Q. And is that located in Winston-Salem?

A. Yes.

Q. Is it a corporation, Mr. Massick?

A. No, sir.
Q. Is it owned by you?
A. Me and my sons.
Q. Do you do business just within the city limits of Winston-Salem?
A. No, we work out a radius of about 40 miles around there.
Q. And what is the business of J. G. Massick & Sons?
A. Wholesale groceries.
Q. Selling groceries and allied products to the retail stores?
A. We have two places. My sons—I have two sons—, one of them runs a retail store.
Q. Yes.
A. And me and the other son runs the wholesale business.
Q. The one that runs the retail store, does he have any interest in the wholesale business?
2161 A. We have all got interest in each one of them, yes.
Q. It is equally divided between the three of you?
A. Yes, just about that.
Q. Where is the retail store located, sir?
A. On the same street. We used to be at the Norwood Wholesale house, but we moved this last September on Trade Street.
Q. And from your retail store you sell groceries and allied products to the consuming public?
A. To the consumer, yes.
Q. Now, do you have any competitors in your wholesale line?
A. No, sir, I don't think we do.
Q. You don't have any competitors?
A. Oh, yes, we have competitors in the wholesale.
Q. Who are your competitors from your wholesale warehouse?
A. Well, C. D. Kenny, Pay Cash, Forrest-Rhodes, J. A. Fagg & Son.
Q. Mr. Smitherman's company?
A. Yes.
Q. How about Thomas & Howard?
A. Well, yes, Thomas & Howard very much.
Q. He is one of your principal competitors?
A. That is right.
Q. Does your company purchase or handle salt?

A. Yes, sir.

2162 Q. Does it make any purchases from the Morton Salt Company?

A. Yes, sir.

Q. What type of salt does your company purchase from the Morton Salt Company?

A. Well, at the present time, mostly one hundreds. We have handled the round package and some of the square, but not right recently.

Q. Do you purchase the 100 pound bags?

A. Yes, sir.

Q. That is bulk salt?

A. That is bulk salt, yes.

Q. What is that used for, sir?

A. Well, the country people use it for salting meat, and it is used for different purposes, you know.

Q. You say there was a time when you did purchase the round package blue label salt?

A. Yes, we have bought that. We always bought it from the Morton Salt Company, until I bought one order from this party last year, from Draughon-Hall, I believe it is.

Q. Draughon-Hall?

A. Draughon-Hall, yes, sir.

Q. From Durham?

A. Durham, North Carolina, that is right. I think one order was all at that time. I might have bought two, but I believe one order is all I ever bought from them.

2163 Q. Prior to that time, you were purchasing the round package salt direct from the Morton Salt Company?

A. Direct from the Morton Salt Company. It came in a car with other stuff. I usually bought carloads in the fall, because we sold a good bunch of loose salt, bulk salt, then.

Q. And since the time that you purchased an order from the Draughon-Hall Company of Durham on the round package salt, have you made any purchases direct from the Morton Salt Company?

A. Yes, sir.

Q. Of the round package salt?

A. Yes.

Q. And what price do you pay for that round package?

A. $1.50. I pay Morton, and Draughon-Hall, I think it

was—I don't know how much, $1.45 or $1.46, or something like that. It was about 5-cents a case cheaper.

Q. About 5-cents a case cheaper?

A. Yes, sir.

Q. And what do you resell the round package salt to the retailer stores for, sir?

A. What do we sell it at?

Q. Yes.

A. They retail for 10-cents a package.

Q. That is, from your retail store?

A. That is the retail store.

2164 Q. What do you sell it for at wholesale?

A. $1.65.

Q. $1.65 a case?

A. Yes.

Q. And has that price been in effect for a long time, sir?

A. Well, no, I think we used to get, possibly, $1.75, but we had competition, and we had to cut our prices. We did get $1.85.

Q. And then you cut to $1.75?

A. Yes, sir.

Q. And then you cut to $1.65?

A. Yes, sir.

Q. That was due to competitors quoting lower prices?

A. That is what I think most of them was selling it for. That is what the salesmen claimed, that they was getting salt cheaper. Of course, we tried to meet the price. We thought we would get a little business, you see.

Q. And you say since that one order that you placed with Dranghon-Hall, you have been purchasing directly from the Morton Salt Company and being billed directly from the Morton Salt Company?

A. That is right.

Q. You say you are now paying $1.50?

A. $1.50 is what I paid for the last.

Q. And that price has been in effect for the past 2165 several years?

A. Well, $1.50, yes, I think that has been the price for some time.

Q. And the only time you got a lower price is when you purchased from Dranghon-Hall?

A. That is right, that is the only time I ever got a lower price.

Q. What do you sell the 100 pound bags for, sir?

A. $1.10.
Q. $1.10 a hundred pounds?
A. Yes, sir.
Q. And what do you pay for it, do you know, sir?
A. We paid 98-cents for the last, but it is higher, I understand, but I haven't got any more.
Q. They have raised the price since that time?
A. Yes. I don't know what the regular price is, but we paid 98-cents for it along in last November, I think, something like that.
Q. Does your company receive any discounts or allowances from the Morton Salt Company?
A. No, sir.
Q. Has it ever received any from them?
A. No, sir.
Q. On any of its products?
A. No, sir.
2166 Mr. Haslett: I think that is all.
Mr. McBride: I have no questions, Mr. Examiner.
Mr. Haslett: Thank you, Mr. Massick, for coming, sir.
(Witness excused.)
2167 Mr. Haslett: I will call Mr. Stone.

CLARENCE STONE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Will you please state your full name for the record, Mr. Stone?
A. Clarence Stone, 908 Cloverdale, Winston-Salem, North Carolina.
Q. In what business are you engaged, Mr. Stone?
A. Wholesale grocery business.
Q. With what company are you connected?
A. Philip Stone & Company.
Q. Is Philip Stone & Company a corporation?
A. No, sir, a partnership.
Q. And have you any interest in the partnership?
A. One-third.
Q. A third?
A. Yes, sir.

2168 Q. And what position do you hold with the firm?
A. Salesman.
Q. Salesman?
A. That is right, we have no titles.
Q. You have no titles?
A. No titles.
Q. All three of you run the business?
A. Yes.
Q. What is the business of Philip Stone & Company?
A. Groceries, wholesale groceries.
Q. Selling groceries and allied products to the retailers?
A. That is right.
Q. What territory is generally covered by your company in the sale of its commodities?
A. A 20-mile radius.
Q. Of Winston-Salem?
A. Winston-Salem.
Q. Have you any competitors?
A. Oh, yes.
Q. Would you name a few of them, please, sir?
A. Pay Cash Grocery, J. W. Smitherman, Forrest-Rhodes, J. A. Fagg, C. D. Kenny Company, Thomas & Howard Company of Salisbury, Thomas & Howard Company of Greensboro, and the Quality Service Unit here.
Q. The Grocery Supply Company?
2169 A. That is right, the Grocery Supply Company.
Q. Does your company purchase or handle salt?
A. We do.
Q. Do you make any purchases from the Morton Salt Company?
A. We do.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 189.

(The document referred to was marked "Commission's Exhibit 189" for identification.)

Mr Haslett: Mr. McBride, am I correct when I say it is stipulated by and between counsel for the respondent and counsel for the Commission that the document marked for identification as Commission's Exhibit No. 189 is an invoice from the Morton Salt Company numbered 33105, directed to the Philip Stone & Company, Winston-Salem, North Carolina, under date of March 4, 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the document described will be received in evidence and marked by the Reporter as Commission's Exhibit No. 189.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 189", was re-
2170 ceived in evidence.)

By Mr. Haslett:

Q. Mr. Stone, I hand you what is now in evidence as Commission's Exhibit No. 189 and ask you to state whether or not that is a typical invoice from the Morton Salt Company to your company for the type of commodity shown thereon?

A. It is.

Q. Does your company purchase Rock Crystal table salt from the Morton Salt Company?

A. Yes.

Q. As shown by Commission's Exhibit 189?

A. Yes, sir.

Q. And does it purchase the Triangle table salt also, sir?

A. Yes, we do.

Q. How are your orders placed with the Morton Salt Company for the Rock Crystal table salt and the Triangle table salt that your company purchases from the Morton Salt Company?

A. Part of the time from the broker here.

Q. What is his name?

A. J. H. Pritchett Brokerage Company.

Q. All right.

A. And part of the time from their salesman, their representative in this territory.

2171 Q. What is his name?

A. Mr. Trice.

Q. Does he call upon you, sir?

A. Yes.

Q. And solicits business for the Morton Salt Company?

A. Yes.

Q. And you give him orders?

A. Yes, sir.

Q. As a result of which commodities are shipped to you in pool cars?

A. Pool cars.

Q. By the Morton Salt Company?

A. That is right.

Q. Where are the cars placed when they arrive, Mr. Stone?

A. Well, at different places. Sometimes at Kenny's, and sometimes what is known as on the long track, that is down on the Southern, the long track. Then they may be placed on the southbound track close to Pay Cash and J. W. Smitherman's.

Q. Does your company haul the commodities from the siding where the car is placed to your warehouse, sir?

A. We do, we have no siding.

Q. In your own trucks?

A. That is right.

Q. And you are not compensated in any way by
2172 the Morton Salt Company for that cartage service, are you, sir?

A. None whatever.

Q. Does your company receive any discounts or allowances from the Morton Salt Company?

A. We do not.

Q. Do you ever purchase a full car of salt at one time, sir?

A. Not in the last three or four years. We used to buy in cars.

Q. But in the past two or three years you haven't done that?

A. We have not.

Q. Do you know the price at which your company is now selling the Rock Crystal table salt per case to your customers?

A. Yes.

Q. What is that price, sir?

A. $1.

Q. $1?

A. Yes.

Q. And do you know the price at which your company is charging its customers, for the Triangle table salt?

A. I do, $1.10.

Q. $1.10 per case?

A. That is right.

2173 Q. What effect would it have upon your business, Mr. Stone, if one of your competitors was offering the Rock Crystal table salt to your customers at 95 cents a case while at the same time you were charging $1 for it, sir?

A. It would eliminate—it did eliminate us in buying carload lots, having to buy in pool cars.

Mr. McBride: May I have that answer read back, Mr. Reporter?

(Last answer read.)

By Mr. Haslett:

Q. Mr. Stone, what effect would it have upon your business if one of your competitors was selling Triangle table salt at $1 per case while at the same time you were charging $1.10 a case for it?

A. We would lose business by not meeting the price.

Q. And if you met the price would your margin of profit be decreased?

A. Decreased, yes.

Q. And would your business be in any way affected, Mr. Stone, if one of your competitors, either C. D. Kenny or Thomas & Howard, were purchasing the Rock Crystal table salt at 5 cents a case lower than the price that you were paying for it to the Morton Salt Company?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You 2174 may answer.

The Witness: It would.

By Mr. Haslett:

Q. Do you think either one of those competitors would be placed in a favorable position?

Mr. McBride: Same objection.

Trial Examiner Purcell: Same ruling. You may answer.

The Witness: State the question again?

By Mr. Haslett:

Q. Do you think that either one of those competitors would be placed in a favorable position, the ones that are receiving a lower price?

A. I do.

Q. Do you know approximately your dollar volume of business with the Morton Salt Company during a twelve consecutive months period, just an approximate figure, sir?

A. Perhaps $1,000.

Q. $1,000 per year?

A. Yes.

Q. Are you still purchasing the Rock Crystal table salt and the Triangle table salt from the Morton Salt Company?

A. We are.

Q. And you have been dealing with them for several years?

A. Yes sir, an unlimited number of years; perhaps
2175 twenty or twenty-five.

Q. Do you know of any competitors that have sold the Rock Crystal table salt and the Triangle table salt to customers in Winston-Salem less than the price that you were charging for it?

A. Only the word that my customers pass on to me.

Q. They have told you that they had a better price?

A. That my price was out of line.

Q. Did they tell you the name of the competitor that was offering it at the lower price?

A. Well, no, they did not.

Q. Did you lower your price to meet the price that they quoted?

A. We did not.

Q. You passed the business up?

A. We did.

Mr. Haslett: I think that is all.

Cross-Examination by Mr. McBride.

Q. In these reports from your retailers, as I understand your testimony, they didn't identify who the competitor was, is that correct?

A. How is that?

Q. In these reports from your retailers, your retail customers, they didn't identify who this competitor of
2176 yours was who was offering the 1½ pound package for less?

A. No, they did not.

Q. I take it they didn't identify either the producer's brand which was being offered for less, is that right?

A. That is right.

Mr. McBride: I think that is all, Mr. Stone.

Mr. Haslett: That is all, thank you very much.

(Witness excused.)

Trial Examiner Purcell: Your next witness.

Mr. Haslett: Mr. Mickey.

H. L. MICKEY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Mickey, will you please state your full name for the record?

A. H. L. Mickey.

Q. And do you reside in Winston-Salem, North Carolina?

A. 1182 Walnut Street, Winston-Salem.

Q. And in what business are you engaged, sir?

A. I am branch manager of C. D. Kenny Company.

Q. And is that a wholesale grocery company?

A. Yes sir.

2177 Q. It sells groceries and allied products to the retail stores?

A. Yes sir.

Q. How long have you been branch manager?

A. 27 years.

Q. Always in Winston-Salem?

A. Yes, sir.

Q. Is C. D. Kenny Company a corporation, if you know, sir?

A. Yes, sir.

Q. Do you know the laws of the State under which it was incorporated?

A. It is either Maryland or New Jersey, I am not positive which.

Q. What are your duties as branch manager of C. D. Kenny Company in Winston-Salem, sir?

A. Well, I just direct the activities of this branch entirely.

Q. Do you do any purchasing of commodities?

A. Yes sir.

Q. And do you set the price at which they are to be sold?

A. Yes sir.

Q. What territory is covered by the C. D. Kenny branch here in Winston-Salem, sir?

A. A 40-mile radius of Winston-Salem.

Q. Do you have any competitors?

2178 A. Yes sir.

Q. Will you name some of them, please, sir?

A. Well, we have J. W. Smitherman Company, Pay Cash Grocery, Philip Stone & Company, Forrest-Rhodes and J. A. Fagg. That is in Winston-Salem, and in Greensboro we have Thomas & Howard and Banner & Truelove Company in Greensboro.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. Do you make any purchases from the Morton Salt Company?

A. Yes sir.

Q. What type of commodities do you purchase from the Morton Salt Company?

A. Well, we handle their entire line of salt in different size packages.

Q. Do you handle the free running and iodized salt?

A. Yes sir.

Q. Do also handle the Triangle?

A. Yes sir.

Q. And the Kleer brand?

A. No, we don't handle the Kleer brand.

Q. Rock Crystal salt?

A. Rock Crystal, yes.

Q. Do you handle any bulk salt in 100 pound sacks?

A. We do occasionally, we haven't got any now.

Q. Do you handle any seasoning salt?

2179 A. Not to amount to anything.

Q. Do you handle any block salt?

A. No sir.

Q. What is the bulk salt in 100 pound sacks used for, sir?

A. What is it used for?

Q. Yes.

A. Well, it is used largely for curing meats.

Q. And you sell it to the farmers?

A. We sell it to the country stores largely, and they sell it to the farmers.

Q. Now, how are orders placed by your company with the Morton Salt Company for its various requirements of salt products processed by the Morton Salt Company?

A. Through their salesman.

Q. Does the broker also call upon you?

A. Yes, through him, too.

Q. And you give either the salesman or the broker orders?

A. Yes sir.

Q. As a result of which the Morton Salt Company ships you products direct to your branch here in Winston-Salem?

A. Yes, or in pool cars. It is shipped sometimes by a freight car and sometimes shipped in pool cars.

Q. And on occasions you have bought a full car load of salt?

A. Yes.

2180 Q. And then on other occasions you buy salt that comes in cars with other purchasers of salt from the Morton Salt Company?

A. Yes, sir.

Q. When they come in pool cars, are they placed on your siding?

A. Well, it depends on how much salt we have in the car. If we have the majority of salt in the car, it would likely be placed on our siding.

Q. That has happened?

A. Yes.

Q. And then on occasions it has been placed on someone else's siding?

A. Yes, sir.

Q. Where it is not on the C. D. Kenny Company siding, does the C. D. Kenny Company haul the salt from the siding where the car is placed to the C. D. Kenny Company's warehouse?

A. Yes, sir.

Q. In their own trucks?

A. Yes, sir.

Q. Are they compensated by the Morton Salt Company for that service?

A. No, sir.

Q. Do you know the price at which your company is paying the Morton Salt Company for the round package salt per case?

2181 A. $1.40.

Q. $1.40 a case?

A. Yes, sir.

Q. And do you know the price at which they are paying for the Triangle salt per case?

A. Well, you mean the square package?

Q. Yes.

A. The 5 cent salt, the price now is 94 cents less 5 cents a case.

Q. You get a discount on that, sir?
A. Yes.
Q. Now, how is that discount paid to you, sir?
A. It is deducted from the invoice.
Q. It is deducted from the invoice?
A. Yes.
Q. You don't get a credit memorandum from the Morton Salt Company?
A. No, sir.
Q. Just a flat deduction from the invoice?
A. Yes. Well how, it might be in the form of a credit memorandum, too. It seems to me like it has been handled both ways. Occasionally it will show right on the invoice and again we will get a credit memorandum for it, but it is the same amount all the time.
Q. The same amount, 5 cents per case?
2182 A. Yes, sir.
Q. Does the price on the 5 cent salt fluctuate quite a bit?
A. It does, yes.
Q. It goes up and down?
A. Yes.
Q. But the 5 cents per case is pretty well stabilized, you get that whether it goes up or down?
A. That is right.
Q. I believe you testified that you pay $1.40 a case for the round package salt?
A. Yes, sir.
Q. You don't receive any discount on that, sir?
A. Well, it is billed at $1.50 and we get 10 cents a case discount on it, that makes it cost us $1.40.
Q. I see, so you get a 10 cent discount on the round package salt?
A. Yes, sir.
Q. That is the free running and iodized?
A. That is correct.
Q. In the blue can?
A. Yes.
Q. Is that billed to you by the Morton Salt Company at $1.50 or $1.40?
A. $1.50.
2183 Q. And how do you receive your discount of 10 cents per case?

A. Well, it is given to the Baltimore office and credited to our account.

Q. Do you get a credit memorandum from the Baltimore office?

A. Yes.

Q. How often do you receive that, sir?

A. Well, I don't know, I would say every quarter.

Q. Every three months?

A. Yes, sir.

Q. And that is put to your account in Baltimore?

A. Yes.

Q. It shows that the C. D. Kenny Company's branch here in Winston-Salem has made that much more money?

A. That is right.

Q. Do you know whether or not when you purchase on a carload basis you get any discount on that, a full car?

A. I don't think we do, no.

Q. You pay the carload price?

A. Yes.

Q. You pay the same price on a carload basis that you would on a pool car basis?

A. That is right.

Q. What is the price that C. D. Kenny Company 2184 sells the round package salt per case to its customers for?

A. We sell it here for $1.60 and $1.70.

Q. $1.60 and $1.70?

A. That is right.

Q. Why do you sell it at $1.60?

A. Well, because we have competition that sells it that way.

Q. And that is in line with other customers of Morton Salt Company who sell it to the retailer customers?

A. That is right.

Q. And then you sell it at $1.70?

A. We have sold some at $1.70, but the majority of our sales are $1.60.

Q. Where do you sell it at $1.70, sir, what territory? Is it outside of Winston-Salem?

A. It probably is, probably in Greensboro territory. I know in making up our selling price on salt we had both prices, we had sold for $1.60 and $1.70.

Q. Is the price which your company pays for its various requirements of salt an important factor in your business?

A. Yes, I would say it is.

Q. And is the price at which your competitors sell salt given consideration by your company in determining the price at which it is going to sell its salt?

A. Yes.

2185 Q. What effect would it have on your business, Mr. Mickey, if one of your competitors was selling Morton's round package blue label free running and iodized salt at $1.55 a case while at the same time you were charging $1.60 a case for it?

A. Well, it would reduce the amount we handle. We wouldn't sell as much salt as we are selling.

Q. Would you lower your price to meet that, sir?

A. Well, I don't know. I don't know whether we would or not.

Q. If you didn't lower the price, why, you would pass the business up, is that it?

A. Some business, yes.

Q. If you did lower the price your margin of profit would be reduced by that amount?

A. That is right.

Q. What effect would it have on your business if one of your competitors was selling the Triangle salt at 5 cents a case under the price that you were charging for it, sir?

A. It would have the same effect, it would reduce the amount we would sell.

Q. It would be an adverse effect upon your business?

A. Yes, sir.

Q. The same is true as to the Rock Crystal salt?

A. Yes, sir.

2186 Q. What effect would it have upon your business, Mr. Mickey, if one of your competitors was paying $1.35 a case for Morton's round package blue label free running and iodized salt while at the same time you were paying $1.40 a case for it, sir?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer.

The Witness: Well, if they were selling at the same price I was selling, it wouldn't have any effect on it.

By Mr. Haslett:

Q. Well, do you think that the favored customer who was receiving the lower price would be in a favorable position?

Mr. McBride: Same objection.

Trial Examiner Purcell: Same ruling. You may answer.

By Mr. Haslett:

Q. By receiving the lower price?

A. Well, he would have a chance to reduce his selling price if he wanted to.

Q. He would have that as a constant threat to your business because he could undersell you at any time he desired to, is that correct, sir?

A. The figures were what, $1.35 and $1.40?

Q. Yes.

2187 A. He could undersell if he was a mind to go far enough in reducing his price, yes.

Q. Do you do any promotional work in connection with the resale of Morton's round package salt?

A. No, sir.

Q. Did you push it in any way, sir?

A. Oh, we push, but we don't make any effort, any more so than we would on any other items.

Q. You wouldn't give it any special attention?

A. No, sir.

Q. Do you know approximately the number of cases that your branch purchases from the Morton Salt Company during a twelve consecutive months period?

A. Of any particular kind?

Q. Of the round package salt, sir?

A. I would say approximately 700 cases per year.

Q. Approximately 700 cases per year?

A. Yes, sir.

Q. And do you know approximately the dollar volume of business done in all types of salt with the Morton Salt Company during a twelve consecutive months period?

A. I could give you a rough idea, probably $3500.

Q. About $3500?

A. Yes.

Q. Would that include the round package salt also, sir?

2188 A. Yes, sir.

Mr. Haslett: I think that is all, Mr. McBride.
Mr. McBride: I have no cross-examination.
Mr. Haslett: Thank you very much, Mr. Mickey, for coming, sir.
(Witness excused.)
Trial Examiner Purcell: Your next witness.
Mr. Haslett: Mr. Forrest.

E. G. FORREST was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Your name is Mr. E. G. Forrest?
A. Yes.
Q. Do you reside in Winston-Salem, sir?
A. Yes, sir.
Q. In what business are you engaged?
A. Wholesale grocery.
Q. And with what company are you connected?
A. Forrest-Rhodes Grocery Company.
Q. Is that a corporation?
A. No, sir, it is a proprietorship, I own it.
Q. You own the company?
2189 A. Yes.
Q. What is the business of the Forrest-Rhodes Company?
A. Well, we are just general wholesale grocers.
Q. You sell groceries and allied products to the retailers?
A. Yes, sir.
Q. And what territory do you sell groceries in, sir?
A. I would say a radius of 25 miles of Winston-Salem.
Q. Do you do any retail business at all?
A. None, no sir.
Q. Has the Forrest-Rhodes Company any competitors?
A. Yes, sir.
Q. Would you name a few of them, please, sir?
A. You mean in the city?
Q. Yes.
A. Well, Pay Cash Grocery, J. W. Smitherman Com-

pany, C. D. Kenny Company, Philip Stone & Company, J. A. Fagg & Sons, are, I believe, the main ones.

Q. Is Thomas and Howard also a competitor of yours?

A. They are, yes, from Salisbury.

Q. Does your company purchase or handle salt?

A. Yes, sir.

Q. Does it make any purchases from the Morton Salt Company?

A. Yes.

Q. What type of salt does your company purchase from the Morton Salt Company?

2190 A. It is largely the round package free running and occasionally some 5 cents package. We do very little other salt business, and the smoked salt, very little other business except the round package.

Q. And how are your orders placed with the Morton Salt Company for the round package salt and other types that you buy?

A. Through the broker or their salesman.

Q. They call upon you?

A. Yes.

Q. And solicit orders from your company?

A. Yes, sir.

Q. As a result of which commodities are shipped to you by the Morton Salt Company?

A. Yes, sir.

Q. Do they come in pool cars?

A. Yes, sir.

Q. And are the cars placed on your siding?

A. No, sir.

Q. Where are they placed, sir?

A. On some of the tracks, I really don't know. They are shipped in cars to the broker and whichever track is most convenient, I imagine to the biggest receiver of salt.

Q. Does your company haul the salt from the siding to your warehouse?

2191 A. Yes, sir.

Q. In your own trucks?

A. Yes, sir.

Q. At your own expense?

A. That is right.

Q. Do you know the price at which your company pays

at the present time for the round package blue label free running and iodized salt per case?

A. $1.42.

Q. $1.42?

A. Yes, sir.

Q. And has that price been in effect for a long time, sir?

A. Several years ago I think we started this arrangement and it was $1.40 through some South Carolina concern, some outfit down there, and then they gave it up, couldn't qualify for the quantity discount, and Draughon-Hall has been billing us. Now, Morton Salt Company does not sell us the round package. Draughon-Hall at Durham sells it to us, or bills it to us. It is billed by Draughon-Hall Company, our round package salt.

Q. I see, the salesman solicits orders from you for the round package salt?

A. Yes, sir.

Q. And you are billed by Draughon-Hall?

A. Yes.

2192 Q. Of Durham, North Carolina?

A. Yes, sir.

Q. And you are billed on a basis of how much per case, sir?

A. $1.42.

Q. I see. Do you know how long you have been billed at $1.42 by Draughon-Hall for your requirements of free running and iodized salt in the blue can?

A. I really don't. Two or three years, though, I am sure.

Q. Two or three years ago?

A. Yes.

Q. Prior to the time that you began to be billed by Draughon-Hall, did you receive invoices from the Morton Salt Company for your requirements of round package salt?

A. Prior to that for a while we had an arrangement with—I have forgotten the stores in South Carolina, and were billed at $1.40, and when that flickered out, why, they said that Draughon-Hall would bill us at $1.42, so we just changed over to Draughon-Hall.

Q. Did your company at anytime ever pay $1.50 to the Morton Salt Company for the round package salt per case, sir?

A. Let's put it this way, that we have, at one time, paid their regular price for it. I think they have changed the package on it. I wouldn't want to say that we pay $1.50 because it may have been a different price, but we
2193 have, at one time, paid their regular price for it. That has been a good many years ago, though.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 190.

(The document referred to was marked "Commission's Exhibit 190" for identification.)

By Mr. Haslett:

Q. Mr. Forrest, I hand you now what has been marked for identification Commission's Exhibit No. 190, and ask you to state what that is, if you know, sir?

A. Yes, this is a copy of a bill, or a bill from Draughon-Hall Company to Forrest-Rhodes Company for 100 cases of Morton's iodized and free running salt.

Q. Has it a date, sir?

A. December 4, 1940.

Mr. Haslett: I offer the document.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection the document described will be received in evidence and marked by the Reporter as Commission's Exhibit No. 190.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 190", was received in evidence.)

By Mr. Haslett:

2194 Q. Mr. Forrest, I again hand you Commission's Exhibit No. 190 and ask you to state whether that is a typical invoice received by Forrest-Rhodes Company from Draughon-Hall on the type of commodities as shown thereon?

A. Yes, sir.

Mr. Haslett: Mr. Reporter, I hand you a document and ask that it be marked for identification as Commission's Exhibit No. 191.

(The document referred to was marked "Commission's Exhibit 191" for identification.)

Mr. Haslett: Mr. McBride, am I correct when I state that it is stipulated by and between counsel for the respondent and counsel for the Commission that the docu-

ment marked for identification as Commission's Exhibit No. 191 is a true and correct invoice from the Morton Salt Company, numbered 45783, directed to Forrest-Rhodes Company, Winston-Salem, North Carolina, under date of May 21st, 1941?

Mr. McBride: That is correct.

Mr. Haslett: I offer the document, please, sir.

Mr. McBride: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the Reporter as Commission's Exhibit No. 191.

(The document referred to, heretofore marked for identification "COMMISSION'S EXHIBIT 191", was received in evidence.)

2195

By Mr. Haslett:

Q. I hand you now what has been received in evidence as Commission's Exhibit No. 191; and ask you to state whether or not that is a typical invoice received by the Forrest-Rhodes Company from the Morton Salt Company for the type of commodities as shown thereon?

A. Yes sir.

Q. Does your company receive any discounts or allowances from the Morton Salt Company other than the 8 cent allowance on the round package salt?

A. No sir.

Q. What is the purpose of billing by Forrest-Rhodes of the round package salt to your company? What was that done for, sir?

A. You mean what was the purpose of Draughon-Hall billing it?

Q. Yes.

A. Well, to make us competitive with these people like Kenny and Thomas & Howard that qualify for the $1.40 price. Through the set-up of the salt people of so many cases you are entitled to the $1.40 price, and they are trying to make us more or less competitive.

Q. And was that done at the instance of the Morton Salt Company?

2196 A. I believe so, because I didn't know about it.

Q. And you wanted to be on the same basis with your competitors as to the purchase price of Morton's salt?

A. Well, if I was to keep operating wholesale I would have to be.

Q. What do you sell it for now to your retailer customers, sir?

A. Our selling price is $1.70. We sell some at $1.60.

Q. Why do you sell some of the round package blue label salt at $1.60 a case?

A. Well, sir, on customers that are good pay, to meet competition. We have competition, and other customers that we have to carry more or less, and the competition is not so friendly, why, we get $1.70.

Q. I see. What effect would it have upon your business, Mr. Forrest, if one of your competitors lowered the price of Morton's round package salt to $1.55 a case while at the same time you were selling it at $1.60 a case?

A. Well, sir, I would have to meet the price or not sell the salt.

Q. What effect would it have on your business if one of your competitors was selling Rock Crystal table salt at 5 cents a case under the price that you were charging for it, sir?

A. Well, it would be the same thing. I would have 2197 to cut my price or pass up the business.

Q. And that would be true as to the Triangle table salt also, sir?

A. Yes, sir.

Q. Do you know approximately the number of cases of that round package blue label salt that you handle during a year's period?

A. I would say seven or eight hundred cases.

Q. About seven hundred or eight hundred cases?

A. That is just approximately now. We buy one hundred cases at a time usually, and every 60 days or oftener, perhaps.

Q. You don't purchase five thousand cases per year?

A. No sir.

Q. It is less than five thousand?

A. Yes.

Q. If one of your competitors was purchasing the Morton's round package salt at $1.35 a case while at the same time you were paying $1.42 a case for it, sir, would that, in any way, affect your business?

Mr. McBride: My usual objection, Mr. Examiner.

Trial Examiner Purcell: Objection overruled. You may answer, sir.

The Witness: Well, if he was to take advantage of his

better price to reduce his own selling cost, I mean his
2198 selling price, yes, if I sold any salt I would have to meet his price and it would possibly be below my operating cost.

By Mr. Haslett:

Q. Would that also be true, Mr. Forrest, if he was purchasing it at $1.40 while you were purchasing it at $1.42?

Mr. McBride: My same objection.

Trial Examiner Purcell: Same ruling. You may answer.

The Witness: I don't think he could hurt me so bad with that. Certainly not an out-of-town jobber, because his selling cost in my territory would probably be greater than mine, and it wouldn't make such a great difference.

By Mr. Haslett:

Q. It would make some difference?

A. Yes, sure it would.

Q. The 2 cent differential in price then on a case of salt might affect your business in some way, is that true, sir?

A. I think so, certainly it would.

Q. Your company gives consideration to the prices at which its competitors charge for salt in fixing the price at which it is going to charge for the salt, does it not, sir?

A. We have to, yes.

Mr. Haslett: I think that is all.

2199 Trial Examiner Purcell: Any cross-examination?

Mr. McBride: No cross-examination.

Mr. Haslett: Thank you, sir, for coming.

(Witness excused.)

Mr. Haslett: Mr. Stratford, please, sir.

Trial Examiner Purcell: Let the record show that Mr. H. R. Stratford is being recalled by the attorney for the Commission on direct examination, Mr. Stratford having been heretofore duly sworn.

H. R. STRATFORD was thereupon recalled as a witness for the Commission and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Stratford, I hand you herewith the advertising that was introduced into evidence this morning, and ask you to state what that type of advertising is used for in connection with the resale of Morton's products?

A. Those pieces of advertising are used by our salesmen in contacting the retail stores, and are placed at the best points close to the point of sale in the store, with the grocer's permission. The purpose being to promote the sale of Morton's products.

Q. To promote the sale of your products to the
2200 consuming public?

A. That is correct.

Q. And are they only used in retail outlets?

A. Yes sir.

Q. The various mediums of advertising which are now a part of the record, are different displays used in connection with the display of products through retailers to the consuming public, is that correct?

A. Yes.

Q. Mr. Stratford, have the brokers soliciting the trade in Thomasville, Georgia, Tampa, Florida, Miami, Florida, Jacksonville, Florida, Macon, Georgia, Atlanta, Georgia, Greenville, South Carolina, Asheville, North Carolina, Columbia, South Carolina, Charlotte, North Carolina, Durham, North Carolina, and Winston-Salem, North Carolina, been employed by the Morton Salt Company to solicit the wholesale trade, in addition to the salesmen?

A. Well, they are under broker's contracts, as are representatives in the respective territories, as you stated, and solicit business from the direct buyers in those territories, not to the exclusion of such sales by our own direct sales representatives.

Q. But in conjunction with the sales representatives?

A. Yes.

Q. Is the rate of brokerage paid to the brokers in
2201 the territories that I named in the preceding question, the same as the rate of brokerage you have testified to in New Orleans?

A. Yes.

Q. That is, 5 cents per case on the round package salt?

A. Yes.

Q. Now, Mr. Stratford, will you state when the payment of 7½ cents per case to the Capitol Stores was started, and who was paid, the Capitol Stores or the Consolidated Companies, Inc. on the purchase of the Capitol Stores?

A. You are referring to Capitol Stores in Louisiana?

Q. That is right, sir.

A. That started in December, 1938, and has been paid to Consolidated at Plaquimine.

Q. Plaquimine, Louisiana?

A. Plaquimine, Louisiana.

Q. And it has been in effect since that date?

A. Yes sir.

Q. And is in effect now?

A. Yes sir.

Q. That is, 7½ cents per case on the round package salt?

A. Yes sir.

Q. Does your company make floor adjustments on the round package salt?

2202 A. No sir, there is no occasion to.

Q. It is not the general policy?

A. No sir.

Q. Will you explain for the Examiner's information what a floor adjustment is, sir?

A. There are times when our competition has made adjustments on the floor stocks of their salt sold to jobbers, and where such competition affects our own account we have in isolated cases met that competition by making adjustments with our own salt in those jobbers' stocks, to the extent of the price decline.

Q. Why do you do that, Mr. Stratford?

A. To meet the competition.

Q. Of the competitors of the Morton Salt Company?

A. Yes.

Q. Who is also selling to that customer?

A. That is correct.

Q. And why do you meet the competition, sir?

A. Well, as I believe you know, salt is a very competitive product, and in order to continue to enjoy business from our worthwhile accounts, we have on occasion met that competition, but as previously stated, it is not a policy of ours to do that.

Q. You only do that where you are forced to do that by competition?

2203 A. Yes sir.

Q. And you do that to protect your interests in that particular customer's account?

A. Yes sir. You understand, of course, that has no relation to our blue package round can.

Q. No, that is only on the square salt?

A. On the competitive items.

Trial Examiner Purcell: You don't acknowledge competition in your round can salt?

The Witness: Not in the way of price.

By Mr. Haslett:

Q. Is that due to its superior quality?

A. Well, we believe it is the best table salt that there is.

Q. Mr. Stratford, I hand you Commission's Exhibit No. 132-A and ask you to state why a competitive adjustment was made on each of the items that appear thereon where such adjustment was made?

A. This competitive adjustment appearing on Commission's Exhibit No. 132-A represented our net selling price at that time to all accounts in that territory. In other words, our gross price less the competitive adjustment was our net selling price to all customers in that territory.

Q. Well, why is it called a competitive adjustment?

A. Because I believe at that time we had not for-

2204 mally reduced our price by way of supplement or formal reduction in our scale, but because of having knowledge that that was the general selling price by competitors at that time, we followed that course until formal reduction was made.

Q. Well, was it done because some competitor was selling salt in that area at that particular price?

A. Not some competitor, but some competitors or all competitors.

Q. Some or all competitors?

A. Yes sir.

Q. One single competitor wouldn't cause you to reduce your price?

A. No, not necessarily.

Q. Now, when the price was reduced and the adjustment shown on Commission's Exhibit 132-A, was that done for the reason that other competitors were selling salt of

comparable quality and size in that area at a price at which the adjustment carried through would reflect?

A. I think that would be the primary reason.

Q. Would there be any other reason for it, sir?

A. There could be.

Q. What would be some other reasons?

A. There wouldn't be any other reason if it was a competitive adjustment as stated on that invoice.

Q. And that is done to meet the competition of
2205 competitors or processors of salt who were selling salt in competition with the Morton Salt Company in that particular area?

A. Yes.

Q. Why does your company do that, sir?

A. I believe I have already stated that salt is a very highly competitive product.

Q. Does it do it to protect its business?

A. Well, your price must be somewhere in line to enjoy a fair volume of business on a profitable basis.

Q. If your prices were high, why, your business would be injured?

A. No sir.

Q. It would not be injured?

A. No sir.

Q. If you were out of line on prices?

A. No sir.

Q. Will you state the reason for that conclusion?

A. Our prices are higher very many times on all of our products or on most of them, and we still enjoy a fair volume of business due to the many factors that go into the processing and marketing of our products, and the reputation that our products have with the trade.

Q. Well, if the price at which your competitors are selling products of comparable size and quality do not affect the business of the Morton Salt Company, why does
2206 the Morton Salt Company make a competitive adjustment?

A. Well, when we believe that the price of our competition is such, low enough and general enough to warrant our making a reduction, we may or we may not meet it. In this case we happened to adjust our prices downward. It doesn't necessarily mean that we adjusted our prices to the full extent of the competitor's quoting prices at that time.

Q. But you get as close to it as possible?

A. Not necessarily.

Q. Then I will repeat my question, what is the real reason for the adjustment made on Commission's Exhibit No. 132-A, if it wasn't to meet the price of a competitor or get close to a competitor and to protect your business?

A. Well, we reduced our prices to a point where we believed they should be in view of the prices being made by our competition in the territory.

Q. And you reduced your prices for a reason, and what was that reason?

A. I don't think I could give you any other reason than I have already stated.

Q. Was it to protect your business?

A. It was so that we naturally wanted to continue to secure the same amount of business or more than we had been before.

Q. And that was the reason for the adjustment?

2207 A. It may have been.

Q. Morton Salt Company likes to be competitive as far as possible, does it not, sir, in its various brands of salt processed and sold to its customers?

A. We like to make our own prices based on what we believe to be a fair margin of profit, and what we believe our products to be worth.

Q. But does competition ever have anything to do with the price at which you sell your products?

A. Yes, sir.

Q. And the price at which competitors are selling, is given consideration in connection with these fixing of prices by the Morton Salt Company, is that correct, sir?

A. It is given consideration.

Q. Now, Mr. Stratford, the $1.50 price for the round package blue can salt is a flat price that is available to your purchasers throughout the United States, is that not true, sir?

A. All direct buyers, yes.

Q. All direct buyers get $1.50 price except those buyers who purchase on the quantity basis get a discount?

A. Yes.

Q. Now, the freight from the processing plant to the customer is paid by the customer, is that correct, sir, on the blue can salt?

2208 A. No sir, the $1.50 price is a delivered price, therefore, the freight is included in the cost of the salt.

Q. The freight from the processing plant to any customer is included in the cast of the $1.50 salt?

A. Yes sir.

Q. That is per case?

A. Yes sir.

Q. So that the uniform price of $1.50 is available to all direct customers, no matter where they are located in the United States, is that correct?

A. That is correct, provided they are buying in cars.

Q. That is right, on a carload basis?

A. Yes sir.

Q. If they buy in less than a carload, the price is $1.60?

A. That is correct.

Q. And the 10 cent differential in price between the $1.50 and $1.60 is for the carload and less than carload basis?

A. Yes sir.

Q. Now, does the Morton Salt Company pay freight on other commodities processed by it?

A. All of our salt, practically all of our salt is sold on a delivered price basis, and the freight is included in the quoting price.

Q. Now, is that true as to the Kleer Crystal salt?

A. Yes sir.

2209 Q. The quoted price of whatever the scale is for that particular territory includes the freight?

A. Yes sir.

Q. Does Morton Salt Company prepay the freight on any instances?

A. Yes.

Q. And on other instances it is f.o.b. destination?

A. Other instances the customer pays the freight and then deducts it from the invoice.

Trial Examiner Purcell: May I ask what would be the reason for doing it one way in one case and the other way in another?

The Witness: Well, there are several reasons. Credit may enter into it. That is one of the reasons.

Trial Examiner Purcell: Oh, it isn't just haphazardly done?

The Witness: No, it is with a purpose in each case.

By Mr. Haslett:

Q. It makes no difference whether the freight is paid by Morton or whether it is paid by the customer, it would still show the list price on the invoice, would it not, sir?

A. That is correct.

Q. And that would be the price the customer would pay?

A. Yes sir.

2210 Q. So am I correct when I state that on all commodities manufactured or processed by the Morton Salt Company, that the freight from the processing plant to the customer's city, where he is located, is reflected in the list price of the commodity to that customer?

A. Yes sir.

Q. Depending on the list in effect in that territory at that particular time?

A. Yes sir.

Q. Mr. Stafford, I hand you herewith Commission's Exhibit No. 176-A, B and C, and ask you to state whether or not Morton Salt Company have customers in each of the areas shown thereon where C. D. Kenny have branches who are purchasing round package salt and other types of salt from the Morton Salt Company?

A. Yes sir.

Q. And they have customers in those areas who are purchasing round package salt, but do not purchase in the required amounts to be eligible for the 10 cent discount?

A. Yes sir.

Q. And that has been in effect and has been happening since 1936?

A. I believe so.

Q. And is happening today?

A. Yes sir.

2211 Q. Morton Salt Company is making sales to such customers in those areas at the present time?

A. Yes sir.

Q. While at the same time, selling to C. D. Kenny Company who have branches in those areas?

A. I believe so.

Q. Mr. Stratford, I hand you Commission's Exhibit 181-A to K, inclusive, and ask you to state whether or not the Morton Salt Company have customers in all areas as shown on these exhibits who are purchasing the round can and other types of salt from the Morton Salt Company, while at the same time Morton Salt Company are selling

its products to the names of the customers who appear thereon?

A. Yes sir.

Q. And that Morton Salt Company have customers in those areas who are purchasing round can salt and other types of salt and who are not getting any discount or allowance from the Morton Salt Company?

A. I believe so.

Q. And has that been happening since 1936 and is it now in effect today?

A. I believe so.

Q. Now, in order that the record may be very clear on this subject, would you explain how a discount on a carload basis is effected?

2212 A. Our current scales show carload discounts for those who buy a full carload of salt, those single buyers that buy a full carload of salt that we are applying the carload discount to all buyers in cars.

Q. Whether pool or otherwise?

A. Yes.

Q. Now, when you make a sale out of your warehouse, would that be on a carload basis, out of any particular one of the warehouses operated by the Morton Salt Company, would that be on a carload basis?

A. The price at the warehouse would be the same as if that buyer had purchased in a car coming to that destination.

Q. Then the list price on a carload basis reflects an amount equal to approximately 5 per cent, is that right, sir?

A. Yes sir.

Q. Now that 5 per cent is deducted from the less than carload price, is that correct, sir?

A. It is deducted from the gross price of the scale.

Q. Which would be less than carload price?

A. Yes sir.

Q. Now, does your company offer any services to jobbers who purchase five thousand cases of free running salt?

A. Yes sir.

Q. What type of services are offered, sir?

A. We solicit the retail trade and secure their 2213 orders, the retailers' orders through jobbers whom we are selling, some of our five thousand case buyers.

Those orders that we secure for those jobbers are turned over to them.

Q. Well,—

A. That is in reference to your jobbers.

Q. That is the five thousand case jobbers?

A. Yes.

Q. Or less?

A. Or less.

Q. Now, the jobbers who purchase five thousand cases or more, up to fifty thousand cases per year, does the Morton Salt Company offer any services in connection with those particular jobbers?

A. Yes, they offer the same service I have just described.

Q. So it wouldn't be any difference between the service offered to jobbers who purchase in less than five thousand cases and jobbers who purchase in more than five thousand cases up to fifty thousand cases?

A. We offer that same service up to fifty thousand cases.

Q. Now, do you offer any services to jobbers who purchase more than fifty thousand cases per year?

A. We do not do any similar service for that type. In fact, there are no jobbers as such that are in the fifty thousand case bracket, if I am correct.

Q. It would be large purchasers such as retail chain stores?

2214 A. Yes.

Q. A&P?

A. A&P, Safeway, American Stores and Kroger.

Q. I think the record shows the names of them, sir?

A. Yes sir.

Q. And they receive 15 cents a case when they get above fifty thousand cases?

A. That is correct.

Q. But no service is offered to retail chain stores in connection with the resale of the products?

A. Well, they have their own sales and merchandising practices, and do not permit any such work in their stores, therefore, we haven't done any, nor attempted to.

Q. And do you furnish any advertising displays to jobbers?

A. No sir, there is no purpose and nothing to be accomplished by furnishing advertising displays to jobbers.

We may put up a banner of muslin or a metal sign or something of that type in the jobber's warehouse, which is an isolated practice.

Q. And Mr. Stratford, how long has the carload discount been in effect, prior to 1936?

A. I really can't say.

Q. Has it been in effect for several years?

A. It has been in effect for sometime, however, at times the carload discount was absorbed in the delivered
2215 price and did not show as a separate item.

Q. How long has the present carload discount been in effect, if you know, sir?

A. Well, I don't believe it is more than a year, something like that.

Q. More than a year?

A. I think about that.

Q. Prior to the issuance of the complaint herein against the Morton Salt Company?

A. Well, I am not sure of that.

Q. How long has the additional discount amount to approximately 5 per cent based upon a $50,000 purchase during a twelve consecutive months period been in effect?

A. Well, I believe that was put into effect at the same time we put in our other quantity discounts.

Q. And when you say "other quantity discounts", what do you mean, sir?

A. Referring to our five thousand and fifty thousand case buyers. I assume the 5 per cent that you are talking about is the unit discount on other grades of salt?

Q. That is right, on the $50,000 purchases, that is only on table salt, isn't it, sir?

A. Yes sir.

Q. I mean, it is not given on any other grade of salt other than table salt?

2216 A. Standard grades of table salt.

Q. And you say the 10 cent and 15 cent discount on the five thousand and fifty thousand case purchases respectively, has been in effect about the same length of time as the discount amounting to approximately 5 per cent on a $50,000 purchase?

A. That is my belief.

Q. The prices quoted in the various lists or scales that are in evidence are the carload prices, aren't they, sir?

A. They are the prices that apply to buyers in cars.

Q. The discount that is granted to customers who purchase in cars is a fixed amount, is it not, sir, which equals approximately 5 per cent?

A. Yes sir.

Q. Now, in computing the $50,000 purchase in order to be eligible for the additional discount which amounts to approximately 5 per cent, is the free running and iodized salt taken into account by the Morton Salt Company in arriving at that figure?

A. Yes, but that is part of the table salt purchase.

Q. So if a customer purchased five thousand cases of salt of the free running and iodized salt, and his total purchases were equal to $50,000 or exactly $50,000, he would get the 10 cents on the free running salt as a discount, and then on all other types of salt he would get an amount
2217 equal to approximately 5 per cent?

A. Yes sir.

Q. That is approximately 5 per cent on other types of table salt?

A. Yes sir.

Q. Does Morton Salt Company publish a table of discounts?

A. What do you mean?

Q. Well, does it make any publication of the discounts that it allows on the various quantities of salt and grades of salt?

A. Well, the discount appears right in the scale.

Q. That is in the back of the scale?

A. That is our unit discount, yes.

Q. Then that would show every discount that Morton Salt Company would allow to its customers who purchase in the various amounts?

A. I believe it would.

Q. Would it show the 15 cent per case on a fifty thousand case purchase?

A. No, it just shows the unit discount in the scale.

Q. That is applied where it is in cars?

A. Yes, sir.

Q. On a carload basis?

A. Yes.

Q. Then there is no publication caused to be issued
2218 by the Morton Salt Company which shows the discount that it does grant and allowed to customers who qualify for certain quantities?

A. Well, we have a regular unit discount schedule at a fixed amount for the various items of table salt to which that quantity discount applies, and that is a known amount.

Q. That is a known amount?

A. Yes.

Q. And is it public?

A. Yes.

Q. And is in the scales?

A. It is in the scales. Naturally the blue package, 10 cents and 15 cents is not in the scale.

Q. Is that the only one that is not in the scale, 10 cents, and 15 cents?

A. I believe so.

Q. And the others would show the $50,000 purchase?

A. It would show the unit discount.

Q. Which is applicable to the $50,000 purchase?

A. Yes, sir.

Q. How do you advise the trade as to the five thousand and fifty thousand case purchases in order to be eligible for the quantity discount granted and allowed by the Morton Salt Company?

A. Well, it appears to us that if there is any 2219 account that has an outside chance of buying five thousand cases, we believe it is up to us from a sales promotional standpoint to encourage his qualifying for the five thousand cases.

Q. Does that show on the books and records of the Morton Salt Company?

A. I believe so.

Q. When a customer begins to get around the figure of five thousand cases, then he is contacted and told about the discount?

A. Well, where it appears that he is a likely candidate for qualifying for five thousand cases. In other words, there is no point in going around to a fifty case a year buyer or a hundred case a year buyer and asking him if he doesn't want to qualify for five thousand cases.

Q. Have you any customers who are purchasing forty-five hundred cases per year who do not get a discount?

A. Who do not get it?

Q. Yes.

A. Yes, sir.

Q. There are a number of customers purchasing ap-

proximately forty-five hundred cases a year that do not get the 10 cent discount on the free running and iodized salt?

A. Yes, sir.

Q. Have you any that are purchasing approximately forty-nine hundred cases per year?

2220 A. I believe so. They would have to buy five thousand cases within a twelve consecutive months period to qualify for the quantity discount.

Q. Why does your company give these discounts, Mr. Stratford, on the round package salt?

A. We believe that those discounts are representative of our cost savings, and also we believe they are proper from a sales promotional standpoint and we believe that they are equitable to our trade and to ourselves.

Q. Do you have any customers other than the Consolidated Companies of Plaquimine and the Capitol Stores at New Orleans that get 7½ cents per case allowance on Morton's round package salt, upon its purchases?

A. No, sir.

Q. They are the only two?

A. They are the only one; they are part of one and the same thing.

Q. You consider them as one customer?

A. Yes, sir.

Q. And that is the only customer?

A. Yes, sir.

Q. Mr. Stratford, has your company customers who purchase $45,000 worth of table salt during a twelve consecutive months period who do not receive the additional discount amounting to approximately 5 per cent?

2221 A. Yes.

Q. And have you customers who purchase approximately forty-five thousand or over, but not fifty thousand cases of Morton's round package salt who do not receive the 15 cent per case allowance?

A. Yes.

Q. Has your company ever lowered the price of its round package salt to meet the price of a competitor?

A. No sir.

Q. Why not, sir?

A. Well, we believe it would be worth the price that we are selling it at.

Q. Have you any competitors that are charging $1.50

for round package salt of comparable grade and quality as the blue label and blue can salt?

A. No sir, not to my knowledge.

Q. How was the five thousand case figure in order to be eligible for the 10 cent discount reached? How was it arrived at, sir?

A. Well, the five thousand case, as well as the fifty thousand case bracket, both classifications are arbitrary accounts, and as previously stated were arrived at through our own cost savings, through their sales promotional value by such classifications, and because we believe them to be fair and equitable to both our trade and to our customers.

2222 Q. And do you say the five thousand and fifty thousand figures are arbitrary figures?

A. Yes.

Q. Why is the Morton's round package blue can salt sold at a higher price than competing brands?

A. Because we believe it to be worth the price at which we are selling it.

Q. Do you know what the minimum weight of a car of salt is, sir?

A. 45,000 pounds.

Q. And it might varying up to 75,000 pounds as a maximum weight?

A. Or more.

Q. Or more?

A. Yes.

Q. There is really no maximum weight of a car, is there?

A. Well, the maximum weight is the maximum load of a particular car in which the salt is in, although there are a few, if any instances, that cars take the maximum weight except bulk without packaging.

Q. Mr. Stratford, has your company ever allowed a discount amounting to approximately 5 per cent over and above the quantity discount, that is on $50,000 purchases, before the completion of the $50,000 quantity during a twelve consecutive months period?

2223 A. Not to my knowledge.

Q. Has your company ever anticipated the purchases of a customer and granted him the discount before he had reached the $50,000 purchase?

A. Our regular practice on that always has been, to start a qualifying date, and upon the completion of that twelve months' period, determine whether they have qualified or not, and then make payment, but not until qualification has been made.

Q. You have got to be definitely assured that they have qualified before the payment is made?

A. Yes, that is the purpose of not paying until the twelve months' period has been completed, unless they exceeded that within the twelve months.

Q. Are all sales made to the customers of Morton who receive the various discounts over and above the carload discount, shipped directly by the Morton Salt Company to the principal office and place of business of such customers?

A. Would you read that back?

(Last question read.)

The Witness: Are you referring to the $50,000 discount?

By Mr. Haslett:

Q. I am referring to all customers who receive any discounts at all from the Morton Salt Company. When 2224 you make your sales to the C. D. Kenny Company, you don't ship it to the principal office and place of business of that company, do you?

A. No sir.

Q. You ship it to each of the branches as directed by the C. D. Kenny Company?

A. Yes sir.

Q. Is that true also as to the A&P?

A. Yes.

Q. And Thomas & Howard?

A. Yes.

Q. As to each of those corporations, they place their orders and shipments are made direct to the corporation so placing the order?

A. Yes.

Q. And is that true also as to NROG?

A. Yes.

Q. And Safeway Stores?

A. Yes.

Q. All customers who receive any discount have the privilege of directing the shipment to any of their branches?

A. Yes sir.

Q. And such shipments would be made by the Morton Salt Company?

A. Yes sir.

2225 Q. Mr. Stratford, when a customer of the Morton Salt Company has once qualified for the 10 cent discount on the round package salt, is such a discount then granted by the Morton Salt Company every three months to that customer?

A. As a general practice.

Q. Then on some occasions it is granted on a yearly basis, is that correct, sir?

A. Yes sir.

Q. Now, is that true also as to the fifty thousand case purchasers?

A. Yes sir.

Q. When a customer is once qualified for that, he gets his discount every three months or every six months or every year, as the case may be?

A. Yes sir.

Q. That would also be true as to the additional discount granted over and above the regular carload discount, which amounts to approximately 5 per cent from the list price on table salt?

A. Well, in that case we often show it directly, or rather, show that in the form of a credit memorandum with the invoice.

Q. It is a credit memorandum with the invoice?

A. Yes.

Q. But once he has qualified for that, he gets it

2226 on the invoices after he has so qualified?

A. Yes sir.

Q. Would he be allowed a blanket credit memorandum for his purchases of the year on which he did qualify for that particular discount?

A. Yes sir.

Q. After he has made the purchases and qualified, he would then get a credit memorandum showing a discount amounting to approximately 5 per cent on all table salt that he purchased during that year?

A. That is true on the five thousand and fifty thousand case brackets.

Q. Well, is that true on the $50,000 purchase bracket?

A. I suppose it would be. To be frank with you I don't recall whether we have followed that practice on the $50,000 ones or not.

Q. You don't know at this time whether that has been followed or not, sir?

A. No, I would believe it would depend on whether they definitely advised us that they were starting to qualify.

Q. Mr. Stratford, I hand you Commission's Exhibit No. 42-A, B, C and D, and ask you to state whether or not the Morton Salt Company has, during all of the time since June 19, 1936, had customers in the same areas as those customers' names and places of business who are
2227 designated thereon, who have not received a 10 cent allowance per case on their purchases of Morton's blue package table salt?

A. Yes sir.

Q. Is the discount an allowance granted by the Morton Salt Company to its various customers on the round package salt also paid in the form of a check?

A. Yes sir.

Q. Has there been occasion when a credit memorandum has gone through for that, sir?

A. There may be, but the general practice is by check.

Q. Now, getting back to the competitive adjustment a little bit, Mr. Stratford, isn't it a fact that the real reason that the Morton Salt Company does make competitive adjustments, is to protect its business with that particular customer where such adjustment has been made?

A. Well, that has a bearing on it.

Q. It has something to do with it?

A. It is taken into consideration.

Q. And is that also true as to the floor adjustments?

A. Yes.

Q. On the sporadic occasions where that has been done, it has been done to protect its business with that particular customer?

A. That has something to do with it.

Q. Mr. Stratford, I hand you Commission's Ex-
2228 hibit 172, and ask you to state whether or not each one of the customers whose names appear thereon were furnished floor display services and advertising in connection with the round package salt to the Morton Salt Company, for which the Morton Salt Company compensated such customer for such advertising and display services?

A. Every customer listed on Exhibit 172 received payment in the amount and for the cases listed thereon in accordance with our formal contract with such customers

covering a specified number of cases purchased, and placed in display by them.

2229 Q. Was compensation for the services made available to all customers in the territory where it was put into effect?

A. Yes, it was made to all customers, both chain stores, and independent stores.

Q. And to the various retailers who might have been customers of the wholesalers who bought their salt directly from the Morton Salt Company?

A. Yes, sir.

Q. Did Morton Salt Company have an agreement with each of those retailers who furnished such promotional services and facilities to the Morton Salt Company in connection with the resale of the round package salt?

A. Yes, we have had a formal contract with each one. Naturally, some were not contracted as early as others. In fact, some of the corporate chains came in after we had started with others.

Q. Why did the Morton Salt Company put into effect an advertising program of that type, sir?

A. To the sales promotional benefit of Morton's salt, to increase its sales.

Q. Morton's round package salt?

A. Yes.

Q. Does Commission's exhibit 173-A represent the typical display of Morton's round package salt used by the various retailers whose names appear on Commission's exhibit 172?

2230 A. It would for the number of cases involved.

Q. And the number of cases would have something to do with the type of display?

A. Yes.

Q. Would you explain that a little, please, sir?

A. Well, naturally, the number of cases has a bearing on the size of the display and the salability of the display.

Q. And he would be compensated according to the size of the display?

A. He would be compensated in accordance with the number of cases purchased and placed in display.

Q. I see.

A. Regardless of his display's appearance.

Q. Then, the number of cases that he used in connection with the display would govern the amount of compensation he received from the Morton Salt Company?

A. That is correct.

Trial Examiner Purcell: Mr. Stradford, would you enlighten the Examiner, please, on one or two little matters?

The Witness: Yes, sir.

Trial Examiner Purcell: There has been a great deal of reference throughout your testimony to a discount of approximately 5 per cent. Would you explain to me what the word "approximately" means? That is to say, does that discount of 5 per cent vary at times, or would it
2231 be 4.90 or 4.95 or 5.10, like that? Is it fairly constant, and what is the formula by which you arrive at that discount of approximately 5 per cent?

The Witness: I believe originally when the discount was set up, it amounted to 5 per cent of the net plant price of those items to which the discount applied, and then, due to the fact that the price on those items varied during the months and years following the start of the discount, and got into fractions and it became difficult from a billing and tabulating standpoint, we decided to adopt a unit discount, such unit discount amounting to approximately 5 per cent of the net plant price, and such unit discount is a fixed amount that is not variable per item that it applies.

Trial Examiner Purcell: Oh, then I gather from your explanation that because of the variance in prices between the various products, that it would be improper to say that a discount of 5 per cent is granted, but that 5 per cent is granted on each particular item, and when they are sold in a group, that the net result would be a discount of approximately 5 per cent, is that substantially correct?

The Witness: No. Originally, it was, I understand, 5 per cent on each of the items to which that discount applied. Then, due to the change in prices thereafter, which resulted in fractions, to enable us to continue the exact 5 per cent, it was decided to adopt a unit discount sys-
2232 tem for each item, and that unit, which is a fixed amount, amounts now to approximately 5 per cent of the net plant price for each item.

By Mr. Haslett:

Q. Mr. Stratford, as an example of that, I think for the Examiner's information, am I correct when I state that the Kleer salt might be sold at 85-cents a case and a unit discount of 4-cents per case be allowed on that particular item, and which 4-cents would amount to approximately 5 per cent of the 85-cents, is that correct, sir?

A. No, sir.

Q. Will you state it as an example, then, sir?

A. The unit discount of 5-cents would apply to your 36/1½ square package, and that 5-cents is approximately 5 per cent of the net plant price of our square carton. The "approximately" has to be placed in there, because we occasionally vary the price of our 36/1½'s, yet the unit discount is constant.

Q. Then, if the unit discount is an established figure of 5-cents per case, and the Kleer brand of table salt sold at 85-cents a case, the 5-cents granted on 85-cents, would be more than a 5 per cent discount, would it not, sir?

A. Yes, sir.

Q. But on some occasions that unit discount may vary, is that correct, sir?

2233 A. The unit discount does not vary, but the price varies.

Q. The price may vary and go up to $1?

A. That is correct.

Q. At which time it would be exactly 5 per cent?

A. That is correct.

Mr. Haslett: I think that is clear now, isn't it, sir?

Trial Examiner Purcell: Yes.

Mr. Haslett: I have no further questions of this witness, and will turn him over to Mr. McBride for cross-examination.

Trial Examiner Purcell: Any cross-examination?

Mr. McBride: No cross-examination.

(Witness excused.)

2237 Before the Federal Trade Commission.

In the Matter of
Morton Salt Company. } Docket No. 4319.

Room 1419, Sherman Hotel,
Chicago, Illinois,
Monday, October 5, 1942.

Met, pursuant to notice, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. M. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for Respondent.

2239 Mr. Haslett: We are ready for the Commission, Mr. Examiner.

Mr. McBride: And for the Respondent, Mr. Examiner.

Trial Examiner Purcell: You may proceed.

Mr. McBride: I would first like to make one short statement on the record, Mr. Examiner.

Trial Examiner Purcell: Proceed, sir.

Mr. McBride: From time to time I will refer to the blue package or the blue can during the course of the presentation of the Respondent's Case. In making that reference I will mean at all times, unless specified to the contrary in my questions, Morton's free running plain salt and Morton's iodized salt, both of which are packaged in the round blue package as identified and described in the course of the Commission's case.

I shall also from time to time have occasion to make reference to competitors or competition with respect to customers of the Morton Salt Company. In making such reference, and in using such terms I do not wish it to

2240 be construed as a waiver of my objection to the use of those terms in Mr. Haslett's questions on behalf of the Commission. Rather, they are to be construed as use of terms for purposes of rebuttal testimony.

I will call as my first witness—

Trial Examiner Purcell: One second, please. Is there any statement on behalf of the Commission at this time?

Mr. Haslett: No, I have no statement, Mr. Examiner. I might say in regard to the term "competitor" and also in regard to the term "competition" that they were used by counsel for the Commission as a designation for those manufacturers or customers who sell salt in competition with the Morton Salt Company and in competition with Morton Salt Company's customers. That it was not as a legal conclusion that I used the words in the presentation of the Commission's case.

Trial Examiner Purcell: I think you made that very clear at the time if I remember correctly, Mr. Haslett. That and the term "profit" and the term "agent" I think we had quite extended discussions on all of them and they were used merely for want of a better word that no one seemed to be able to think up that would fit the circumstances. Mr. Haslett assured us on the record at that time that he was not intending to draw any legal conclusion by the use of any of those terms. Isn't that correct, Mr. Haslett?

2241 Mr. Haslett: That is correct.

Trial Examiner Purcell: With that understanding we will proceed.

Mr. McBride: So long as it is understood, I do not wish to have my objections prejudiced or waived by the use of the terms. I will call as my first witness on behalf of the Morton Salt Company, Mr. Herbert R. Stratford.

HERBERT R. STRATFORD was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Will you please state your name and address for the record?

A. Herbert R. Stratford, 70 East Cedar Street, Chicago, Illinois.

Q. What is your occupation, Mr. Stratford?

A. I am with the Morton Salt Company.

Q. What position do you hold with that Company?

A. Vice-president in charge of sales.

Q. Are you the same Mr. Stratford who testified from time to time as a witness on behalf of the Commission in this case?

A. I am.

2242 Q. How long have you been vice-president of the Morton Salt Company?

A. Since May of 1942.

Q. And as vice-president what are your duties, would you describe them briefly?

A. Largely in connection with sales policies of the Company; direct charge of the various sales branches and sales personnel under those branches.

Q. Your office is at the general office of the Morton Salt Company in Chicago?

A. Yes, sir.

Q. How long have you been in the Chicago office of that Company?

A. For over four years.

Q. And prior to your becoming a vice-president, and since you came to the Chicago office, would you describe your duties during that period?

A. They have been in the sales department, in charge of the sales east of the Mississippi primarily, with other executive duties. Sales merchandising, and to some degree advertising nature as to the entire sales operation.

Q. So that during your entire period that you have been in Chicago you have been generally in charge of sales policies and of the sales office east of the Mississippi, is that correct?

2243 A. Yes, sir.

Mr. McBride: Excuse me, off the record.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record, please.

By Mr. McBride:

Q. Mr. Stratford, I show you Commission's Exhibits Nos. 6-A, 7, 8, 10, 11, 12, 13, 14, 15, 16-A, 17, 18, 19, 20, 21, 22, 23, 37, 38, 39, 141, 142-A, 143-A, 155, 180, and I ask you to examine those exhibits and state whether or not the carload discount appears on each of those exhibits?

(Passing exhibits to the witness.)

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: If the Reporter would read back the question to the witness, please, omitting the numbers involved.

(The question above referred to was read by the Reporter.)

The Witness: I have examined these exhibits and find the carload discount appears on each one of them.

By Mr. McBride:

Q. Now, Mr. Stratford, I show you Commission's Exhibits Nos. 34-A, 56-C, 56-E, 58, 62-A, 70, 71, 72, 74-A,
2244 76-A, 79, 80, 82-A, 85, 91, 92-A, 93, 100, 101-A, 105, 107-A, 108-A, 109, 111, 124, 128, 129, 130, 131, 132-A, 137-A, 138-A, 146, 147, 148, 164-A, 184, 188, 189 and 191, and after examining the same I will ask you to state whether or not the carload price of the salt items shown on each of those invoices is extended at the net carload price on each invoice?

(Passing exhibits to the witness.)

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Will the Reporter read the Question, please?

(The question above referred to was read by the Reporter.)

The Witness: I have examined each of these invoices and find that the carload price on each item is extended to reflect the carload discount.

By Mr. McBride:

Q. So that the carload discount does not appear as a separate item or column on any of the invoices to which you have just testified in the last question?

A. That is correct.

Q. Is it true, Mr. Stratford that with respect to the invoices identified by Commission's Exhibits Nos. 34-A through 191 referred to in the next to the last ques-
2245 tion, that if the scale price had been shown and the carload discount shown in connection with the extension on those invoices, the prices on the items of salt

would have been the same as are now shown on those invoices?

A. That is correct.

Q. Now, Mr. Stratford I show you Commission's Exhibits Nos. 6-A, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16-A, 17, 18, 19, 20, 21, 22, 23, 34-A, 35, 36, 37, 38, 39, 58, 60-A, 70, 71, 72, 74-A, 77, 78, 79, 80, 81-A, 82-A, 83, 84, 85, 86, 87, 88-A, 89-B, 89-C, 89-F, 89-G, 89-J, 90-A, 91, 92-A, 93, 96-B, 98-A, 99-A, 100, 101-A, 105, 106-A, 108-A, 109, 111, 113-B, 114-B, 116-A, 119, 120-A, 121-A, 124, 128, 129, 130, 131, 132-A, 137-A, 138-A, 141, 142-A, 143-A, 144, 145, 146, 147, 148, 155, 156, 158-A, 159-A, 160-A, 161-A, 164-A, 180, 184, 185, 187, 188, 189 and 191 and I ask you to examine all of those exhibits and state whether or not the salt shown on each of those exhibits moved as a carload shipment?

(Passing exhibits to the witness.)

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. Will you read the question, please?

(The question above referred to was read by the Reporter.)

The Witness: I have examined all of these ex-
2246 hibits and find that the salt so shown on each invoice moved in a carload.

By Mr. McBride:

Q. Mr. Stratford, I show you Commission's Exhibit No. 13, which is an invoice from the Morton Salt Company to C. D. Kenny Company, and ask you to examine the same and state whether or not any quantity discount appears on the face of that invoice?

(Passing exhibit to the witness.)

A. Yes, sir, it does show a quantity discount appearing on this invoice.

Q. Will you identify the amount of discount from the invoice?

A. $9.50, designated by the words "less quantity discount".

Q. And will you describe the nature of that quantity discount?

A. This discount represents one unit on the 150 containers of 36 24-ounce Triangle table salt, such unit being five cents per container, and one unit on the 50 containers

of 24 2-ounce Triangle table salt,, such unit being four cents per container.

Q. Is that the discount that is granted to purchasers of $50,000 or more of table salt in a twelve months consecutive period, from the Morton Salt Company?

2247 A. It is.

Q. Mr. Stratford, I show you Commission's Exhibit No. 38, which is an invoice from the Morton Salt Company to the Great Atlantic and Pacific Tea Company, and ask you to examine the same, and state whether or not a quantity discount appears on that invoice?

(Passing exhibit to the witness.)

A. Yes, sir. A quantity discount does appear on this invoice.

Q. Will you describe the manner in which it appears on the invoice?

A. It is shown in a column labelled "Quantity Discount", and the item in the amount of one unit for each of the table grade items appears on the invoice, with the exception of the Blue package.

Q. And that column is the first figure column appearing after the description of the salt items on the invoice, is that correct?

A. Yes, sir.

Q. And is that the quantity discount given by Morton Sale Company to purchasers of $50,000 or more of table salt in any twelve months consecutive period from Morton Salt Company?

A. Yes, sir.

Mr. Haslett: What exhibit is that?

Mr. McBride: That is Commission's Exhibit No. 38.

2248 By Mr. McBride:

Q. Mr. Stratford, I show you Commission's Exhibit No. 22, and ask you to examine the same and state whether or not there is an item for cartage appearing on that invoice?

A. There is.

Q. Will you identify it by the amount of the cartage shown?

A. It is described as "Less $1.00 per ton cartage", in the amount of $29.20.

Q. That invoice is from the Morton Salt Company to what customer, at what point?

A. Invoice from the Morton Salt Company, to Progressive Grocer Company, Bad Axe, Michigan.

Q. Will you describe the nature of the cartage shown on that invoice to which you have just testified?

A. This carfage is given to those in this territory purchasing by rail car, and is allowed to offset store door delivery by truck, inasmuch as the movement of salt in this case, which was by rail, did not actually go to the store door.

Q. Was that allowed at that time to all customers in that area who took shipments by rail?

A. Yes, sir.

Q. Mr. Stratford, you say that the allowance was made to customers in that area. Can you describe gen-
2249 erally the area to which you refer?

A. It involves the area which is serviced by truck from our Michigan plants. As I recall, it was primarily the State of Michigan. It may have embraced some additional adjacent territory, but the confines of it depended upon the truck arrangements, which usually are fairly adjacent to the location of the plants.

Q. Mr. Stratford, I show you Commission's Exhibit No. 72, which is an invoice from the Morton Salt Company to the Covington Grocery & Grain Company. I ask you to examine the same, and to state whether or not a competitive adjustment is shown on that invoice?

(Passing exhibit to the witness.)

A. Yes, sir, a competitive adjustment does show on this invoice.

Q. Is it shown on the invoice as a lump sum, or as a column, itemized by the salt items?

A. It is shown, not as a lump sum, but in a column itemized as "Competitive Adjustment".

Q. Is that the first column of figures appearing immediately after the items of salt appearing on the invoice?

A. It is.

Q. What was the occasion of the competitive adjustment appearing on that invoice?

A. At the time this invoice was rendered, our
2250 competition in Louisiana we found to be selling 36 1½'s Rock table salt at 65 cents per container, and we, therefore, adjusted our prices at that time to meet such competition in Louisiana.

Q. Approximately what area was covered by that adjustment at that time?

A. Do you mean in addition to Louisiana?

Q. No, within the State of Louisiana?

A. As I recall, it was in the entire State, and our records would show the exact territory in which such allowance was made.

Q. To all customers in the area designated the competitive adjustment at that time would be allowed, is that correct?

A. Yes.

Q. Now, I show you Commission's Exhibit No. 76-A, and ask you to state whether or not any competitive adjustment is shown on that invoice?

(Passing exhibit to the witness.)

A. Yes, sir, there is. It is shown in a separate column immediately following the description of the salt item, which column is titled "Price Adjustment".

Q. And that is an invoice from the Morton Salt Company to what customer, at what destination?

A. It is an invoice from Morton Salt Company, to Witherspoon Brothers, New Orleans, Louisiana.

2251 Q. What was the occasion of the competitive allowance that was shown on that invoice?

A. The same as described in the previous invoice which you questioned about.

Q. By the previous one, you mean Commission's Exhibit No. 72?

A. Yes, sir.

Q. The destination is shown as New Orleans, Louisiana, is that correct?

A. Yes, sir.

Q. And at that time was that competitive adjustment allowed to all customers of the Morton Salt Company on the item indicated, in the city of New Orleans?

A. Correct.

Q. I show you Commission's Exhibit No. 80, which is an invoice from the Morton Salt Company to the Brandon Grocery Company, at Thomasville, Georgia, and I ask you to examine the same and state whether or not a competitive adjustment is shown on that invoice?

(Passing document to the witness.)

2252 A. Yes, sir, a competitive adjustment is shown on that invoice in a separate column headed "Competi-

tive adjustment," which column appears following a description of the salt items.

Q. What was the occasion of that competitive adjustment?

A. This competitive adjustment was covered by written authority from the Chicago office to make such adjustments to meet similar prices made by other producers in Thomasville, Georgia.

Q. And at the time of the competitive adjustment shown on that invoice, were all customers of the Morton Salt Company in Thomasville, Georgia, allowed the same competitive adjustment on the same items?

A. Yes, sir.

Q. I show you Commission's Exhibit No. 100, being an invoice from the Morton Salt Company to Hagin-Peters Company at Jacksonville, Florida, and ask you to state whether or not a price adjustment of any kind is shown on that invoice?

(Passing document to witness.)

A. Yes, sir.

Q. Will you identify the adjustment?

A. The adjustment is identified by the pencil figure of "Less, 10 cents per case," and deducted from the total amount of the invoice.

Q. Was that pencil endorsement made by the Mor-
2253 ton Salt Company, or some one of its employees, or by the customer?

A. It was not made by an employee of the Morton Salt Company, and I assume it was made by the customer.

Q. Have you examined the sales records of your company to determine whether or not that adjustment was allowed in the amount shown?

A. Yes, sir.

Q. And was it allowed?

A. It was.

Q. Will you describe the occasion of that adjustment?

A. It was allowed upon our finding that other producers in Jacksonville, Florida, at this time were making a similar price.

Q. At the time indicated on that invoice, was the same adjustment allowed on the same items as shown on that invoice, to all other customers of Morton Salt Company in Jacksonville, Florida?

A. It was.

Q. Mr. Stratford, I show you Commission's Exhibit No. 107-A, being an invoice from Morton Salt Company to Modern Grocery Company, at Macon, Georgia, and I ask you to examine it and state whether or not a competitive adjustment is shown on that invoice?

(Passing document to witness.)

A. A competitive adjustment is shown on this in-
2254 voice in a separate column headed "Competitive adjustment," following the description of the salt items.

Q. What was the occasion of that competitive adjustment?

A. This adjustment was made upon our knowledge that other salt producers selling in Macon, Georgia, were selling at prices similar to the adjusted price appearing on this invoice.

Q. And at the time of the date of that invoice, was that competitive adjustment allowed by Morton Salt Company on those items to all its customers in Macon, Georgia?

A. It was.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. I show you Commission's Exhibit No. 108-A, being an invoice from Morton Salt Company to Whitfield Grocery Company, Milledgeville, Georgia. I ask you to examine the same and state whether or not a competitive adjustment is shown on that invoice?

(Passing document to witness.)

A. A competitive adjustment is shown.

Q. Will you identify the competitive adjustment on that invoice, Mr. Stratford?

A. It is shown in a separate column following the
2255 description of the salt items, headed, "Competitive adjustment."

There is also a penciled notation dated August 16th, reading, "Additional 5 cents off on Anchor and W. C.," which means White Crystal fine salt.

Trial Examiner Purcell: Now, gentlemen, at this point, with regard to the penciled memoranda on these various invoices, if my recollection serves me the pencil memoranda in each of those invoices was objected to when Mr. Haslett introduced those various exhibits in evidence.

Mr. McBride: If the Examiner please, I objected to a substantial number of penciled memoranda appearing on various invoices.

Trial Examiner Purcell: My memory so serves me on that.

Mr. McBride: Yes.

Trial Examiner Purcell: If that is true, then the penciled memoranda are not in evidence, and that is not the subject of examination of this witness, then.

Mr. McBride: With respect, however, to the exhibits regarding which I am examining this witness now, I did not so object to the penciled memoranda, and they are in evidence as a part of the invoice.

Mr. Haslett: That is right.

Trial Examiner Purcell: The record will so show?

Mr. McBride: That is correct. I am not examining
2256 this witness with respect to any penciled memoranda as to which exhibits were accepted exclusive of the penciled memoranda.

Trial Examiner Purcell: I understand.

By Mr. McBride:

Q. Will you state the occasion of that competitive adjustment, Mr. Stratford?

A. The occasion is similar to the previous exhibit that you have shown me, namely, it is covered by authority from Chicago to meet prices made by other salt producers selling and having made sales in Milledgeville, Georgia.

Q. And at the date of that invoice, was the same competitive adjustment on the items shown in that invoice allowed to all other customers of Morton Salt Company in that city?

A. Yes, sir.

Q. When you referred to "producers" in your answers to the questions pertaining to Commission's Exhibits Nos. 72, 76-A, 80, 100, 107-A, and 108-A, you mean other producers of salt, is that correct?

A. Yes, sir.

Q. And in referring in your answers to competition with the Morton Salt Company, you are referring to those producers, is that correct?

A. Yes, sir.

Q. And to the extent that you referred to those
2257 producers in the various towns involved in those

questions, you were referring to the sales of those producers in those towns?

A. Yes, sir.

Q. Or other areas?

A. Yes, sir.

Mr. McBride: Is it stipulated, Mr. Haslett, by and between the Federal Trade Commission, and the Morton Salt Company, as Respondent, that if the same questions were propounded to the witness with respect to Commission's Exhibits Nos. 109, 132-A, 142-A, 184 and 189, as were propounded to the witness with respect to Commission's Exhibits Nos. 72, 76-A, 80, 100, 107-A, and 108-A, that the witness' answers would be substantially the same with respect to each of the first mentioned exhibit numbers?

Mr. Haslett: It is so stipulated, by the counsel for the Respondent and counsel for the Commission.

By Mr. McBride:

Q. I show you Commission's Exhibit 112, which is a credit memorandum from the Morton Salt Company to Colonial Stores, Incorporated, at Atlanta, Georgia, dated October 30th, 1941, and I ask you to examine the same and state whether or not an adjustment is shown on that exhibit?

(Passing document to witness.)

A. Yes, sir.

Q. How is it identified on the exhibit?

2258 A. It reads, "Temporary adjustment due to competitive conditions, Invoice No. 77308, October 30th, 1941, shipment Tallahassee, Florida."

Q. Will you describe the occasion of that competitive adjustment?

A. That adjustment was made upon our knowledge that such price was made by other salt producers to Colonial Stores, at this time, and at that place.

Q. Was the competitive adjustment shown here in the form of a quantity discount to Colonial Stores, on the items shown?

Mr. Haslett: What do you mean by "here", Mr. McBride?

By Mr. McBride:

Q. Referring to Commission's Exhibit 112.

A. It is shown as a unit discount of five cents per con-

tainer, on 36 one and one-half pound White Crystal salt, which unit discount is the same as would apply to quantity buyers.

Q. But the adjustment covered by Commission's Exhibit No. 112 was as you have testified, a competitive adjustment, and not a quantity discount?

A. That is correct.

Mr. Haslett: May I see that?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

2259 Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. Mr. Stratford, I show you Commission's Exhibit No. 96-H, which is a computation of the discount of 10 cents per case allowed Southern Food Stores, at Miami, and Tampa, Florida, for the period shown. Will you examine the same and state whether or not you have checked the figures and tabulations shown on that exhibit against the sales records of the Morton Salt Company?

(Passing document to witness.)

A. I have.

Q. Will you state whether or not the total number of cases of the Blue can shown on that exhibit were purchased by the Southern Food Stores within a twelve consecutive months period?

A. They were.

Q. Will you explain why January, 1940, as well as January, 1941, appears on the tabulation?

A. The qualifying period started January 10th of the year 1940. Their last purchase in that twelve month period was made January 9th, 1941, as our records will show.

Q. So that from your records, can you state that Southern Food Stores was not permitted a thirteen consecutive month period for the purpose of qualifying for the 10 cent per case discount on Morton's Blue Can?

2260 A. Yes, sir, they were.

Q. And the purchases appearing for January, 1941, on Commission's Exhibit No. 96-H are only so much of the purchases in January, 1941, as were made from January 1st, 1941, to January 10th, 1941?

A. Yes, sir.

Q. And no purchases appear on that tabulation that

were made by Southern Food Stores subsequent to January 9th, 1941, is that right?

A. That is.

Q. Will you also state whether or not, Mr. Stratford, there are any purchases appearing on this record or tabulation, being Commission's Exhibit No. 96-H, which were made by Southern Food stores prior to January 10th, 1940?

2261 A. It shows no purchases prior to January 10, 1940.

Q. Mr. Stratford, in the course of your duties, have you been familiar during the past several years with the account of Kroger Grocery & Baking Company, with the Morton Salt Company?

A. Yes, sir.

Q. Will you state what quantity discounts, if any, are currently being paid to the Kroger Grocery & Baking Company?

A. They are being paid 15 cents per case on 24-pound ten-ounce Morton's free running and iodized salt, and are also being paid a one unit discount on their purchases of other table salt.

Q. What do you mean by "other table salt"?

A. I mean table salt grades other than the Blue package.

Q. How long has Kroger Grocery and Baking Company been receiving 15 cents per case discount on the Blue can?

A. They have been receiving the discount since January of 1940.

Q. What was the first 15 cent payment made to Kroger Grocery & Baking Company?

A. It was made early in 1941, after the 1940 twelve months figures had been compiled to show that they had purchased in excess of 50,000 cases during the year for the twelve months period of 1940.

Q. And referring to the year, you are referring

2262 to the calendar year 1940?

A. That is right.

Q. And did Kroger Grocery & Baking Company purchase 50,000 cases, or more of the Blue can during the calendar year 1940?

A. They did.

Q. And their payment with respect to the discount allowed them, the quantity discount allowed them on those

purchases, was not made until January, 1941, or early in 1941, is that correct?

A. Yes.

Q. And has the Kroger Grocery & Baking Company at all times since been qualified for the 15 cent discount on the Blue can?

A. Yes, sir.

Q. Prior to receiving the 15 cent discount on the Blue can, did the Kroger Grocery & Baking Company receive any other discount on the Blue can?

A. Yes, they had qualified for the 10 cent per case discount, due to their purchases being in excess of 5,000 cases in any consecutive twelve months period.

Q. And how long prior to 1940 had they been receiving that discount?

A. For several years prior to 1935 or 1936.

Trial Examiner Purcell: Will you read the answer, 2263 please?

(The answer referred to above was read by the Reporter.)

Trial Examiner Purcell: Prior to what?

The Witness: For several years going back, originating prior to 1935 or 1936.

By Mr. McBride:

Q. But of your own knowledge, you know that they have been receiving it from 1935 or 1936 down to 1940, referring now to the 10 cent discount?

A. Yes, sir.

Q. Can you state approximately how long Kroger Grocery & Baking Company has been receiving the extra unit on other table salt, as you have defined it?

A. They have also been receiving that for several years. I would judge, or I am sure they were receiving it prior to 1935.

Q. And of your own knowledge, you know that they have been receiving it from 1935 to date, is that correct?

A. Yes, sir.

Q. During that entire period, have they qualified by the purchase of $50,000 or more of table salt in each consecutive twelve months period?

A. Yes, sir.

Q. And does the Morton Salt Company pay any 2264 discount to Colonial Stores, Incorporated, on pur-

chases of Blue package salt by Colonial Stores, Incorporated, from the Morton Salt Company?

A. Yes, sir.

Q. Will you state the amount of that discount?

A. They receive 10 cents per case on their purchase of our Blue package, inasmuch as they purchased in excess of 5,000 cases during any consecutive twelve months period.

Q. Is any other quantity discount paid to Colonial Stores, Incorporated, by the Morton Salt Company, on any other table salt items?

A. No, sir.

Q. Is a competitive allowance of any sort paid to Colonial Stores, Incorporated, with respect to any other table salt items?

A. Yes, there is.

Q. What is the nature of that competitive allowance?

A. It is in the nature of a unit discount on table grades, that is, table salt grades, to meet a price made by another salt producer, which we understand is given them as a quantity discount.

Q. Now, in referring to a quantity discount in your last answer, you mean that the producing competitor of Morton Salt Company is supposed to be giving a quantity discount to Colonial Stores, is that correct?

2265 A. Yes, sir.

Q. The competitive allowance which you refer to is paid on table grades, other than the Blue package, is that correct?

A. That is correct.

Q. And when was the first payment of such competitive allowance made by the Morton Salt Company to Colonial Stores, Incorporated?

A. July, 1941.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

2266 HERBERT R. STRATFORD, a witness called by and on behalf of the Respondent, having been previously sworn, resumed the stand and testified as follows:

Direct Examination (Continued) by Mr. McBride.

Q. Mr. Stratford, I show you again Commission's Exhibit No. 112, asking you to examine the same, and after examining the same, will you state whether or not the credit memo represented by Commission's Exhibit No. 112 was given for the purpose of making a competitive adjustment to Colonial Stores, Incorporated in the nature to which you have just testified?

(Passing exhibit to the witness.)

A. Yes. This Exhibit No. 112 represents what you stated it to be in your question.

Q. Now, is Commission's Exhibit No. 112 typical of the terminology used in credit memos for that type of competitive adjustment to Colonial Stores, Incorporated from July, 1941 to date?

A. Yes, sir.

2267 Q. Then all competitive adjustments to Colonial Stores, Incorporated, beginning with July 1, 1941, of the type which you have testified to, are characterized as temporary adjustments due to competitive conditions, is that correct?

A. Yes, sir.

Q. I believe you previously testified Mr. Stratford, as a witness on behalf of the Commission, to the effect that a competitive allowance of 7½ cents a case had been paid to Consolidated Stores, Incorporated of Plaquemine, Louisiana since December, 1938, is that correct?

A. Yes, sir.

Q. Is that 7½ cents a competitive adjustment or in the nature of a quantity discount?

A. Competitive adjustment.

Q. Does that Company receive any other competitive adjustments or any quantity discount on any other table salt purchased from Morton Salt Company?

A. It does receive a competitive adjustment in addition to the 7½ cents on the Blue package, such adjustment being on other grades of table salt.

Q. By "other grades of table salt" you mean as before,

all table salt items exclusive of the blue package, is that correct?

A. Yes, sir.

Q. How long has that competitive adjustment been
2268 paid on the other grades of table salt?

A. Since December, 1938.

Q. That is it began at the same time as the discount of 7½ cents on the blue package?

A. Yes, sir.

Q. Can you describe the amount of the competitive adjustment on other table grades made to Consolidated Stores, Incorporated?

A. One unit of discount.

Q. By one unit you are referring to a unit described in the same manner as the quantity discount on $50,000 table salt purchasers, is that correct?

A. Yes, sir.

Q. In making the payment of the unit of competitive allowance to Consolidated Stores, Incorporated, since December, 1938, has that adjustment been made on all wholesale purchases and all retail affiliates of Consolidated Stores. Incorporated?

Mr. Haslett: Mr. Examiner, just one minute. I am going to interpose an objection to the word "adjustment", if by that Mr. McBride means that it is a conclusion of law or a mixed conclusion of law and fact. It is up to the Commission to determine whether or not it is an adjustment.

Trial Examiner Purcell: As a matter of fact you mean?

Mr. Haslett: As a matter of fact.

2269 Mr. McBride: If counsel wishes I am willing to substitute the words "price adjustment" in this particular series of questions in lieu of "competitive adjustment".

Mr. Haslett: Well, I have no particular objection to the word "price" or "competitive" because we have stated on the record our position in regard to that, but I am a little concerned about the word "adjustment".

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. Please make your statement.

Mr. McBride: Mr. Examiner, after discussion off the record between counsel with respect to Mr. Haslett's ob-

jection to my use of the word "competitive adjustment" or "competitive allowance" I wish to state that I do not use the words in the sense of trying to convey either a conclusion of law or a conclusion of fact. Rather, those terms are used as being descriptive of the allowance or adjustment made by the Morton Salt Company as characterized on its own records with the understanding that there is of course reserved to the Commission the right to ascertain as a matter of fact and of law whether such competition in fact existed, and whether the competitive adjustment or competitive allowance is in fact a warranted defense under the Robinson-Patman Act as a matter of law.

2270 Trial Examiner Purcell: You may proceed.

Mr. McBride: Will the Reporter read back the last question.

(The question above referred to was read by the Reporter.)

Mr. McBride: Before the witness answers, Mr. Examiner, I wonder if Mr. Haslett's objection should not be disposed of on the record?

Trial Examiner Purcell: I think Mr. Haslett will withdraw his objection as a matter of record, is that correct?

Mr. Haslett: That is correct. The explanation Mr. McBride made on the record is acceptable and the objection is withdrawn.

Mr. McBride: The witness will answer.

The Witness: The competitive adjustments of one unit discount on table grades of salt has been made to all branches of Consolidated Stores and affiliated houses, wholesale and retail.

By Mr. McBride:

Q. Will you state, Mr. Stratford the occasion for making a competitive adjustment on both the blue can and the other grades of table salt?

A. We were advised by our field representatives if we were to continue to enjoy a shares or portion of Con-
2271 solidated's business that it would be necessary for us to make the 7½ cents per container allowance on the blue package, and also allow one unit discount on other grades of table salt.

Mr. Haslett: May I interpose here just a minute? That advice came to you through the regular channels of your business?

The Witness: Yes, sir.

Mr. Haslett: Through your various district managers?

The Witness: That is correct.

By Mr. McBride:

Q. And the advices regarding competition referred to other producers of salt engaged in the sale of their products in the State of Louisiana where the Consolidated Stores operates, is that correct?

A. Yes, sir.

Q. Mr. Stratford, Commission's Exhibit No. 41 shows American Stores Company as having qualified for the discount of 15 cents per case, quantity discount of 15 cents per case on the blue can. Do you know what the twelve months qualification period of American Stores Company is?

A. Yes, sir. It is the calendar year.

Q. The twelve calendar months of each year constitute the qualification period of American Stores for that discount?

A. That is correct.

Q. Will you state the same information regarding
2272 the Great Atlantic and Pacific Company, if you know?

A. That is also the twelve months of the calendar year.

Q. And what is the qualification period for Safeways Stores, Incorporated, which appears also to receive a quantity discount of 15 cents per case on the blue package?

A. Twelve months to the calendar year.

Q. Mr. Stratford, Commission's Exhibit No. 41 shows that Creasey Corporation, the C. D. Kenny Company, Kroger Grocery Company and National Retailer Owned Grocers each received a unit discount in addition to the carload discount; can you state what period is used by each of those companies in the efforts of that Company to qualify for that additional unit discount?

Mr. Haslett: Now we are right back where we started from in the use of the word "qualify".

Trial Examiner Purcell: The objection is overruled in that instance. The question as framed means what effort do they make to qualify, it is not a question of whether or not they have qualified, what effort do they make to qualify. The objection is overruled. You may answer.

Mr. Haslett: I note an exception.

Trial Examiner Purcell: Let the exception be noted.

The Witness: It is the twelve months calendar year.

2273 By Mr. McBride:

Q. That is true with respect to each of the customers whom I have named in my preceding question?

A. Yes, sir.

Q. Mr. Stratford, I believe you also testified previously at the time you were a witness on behalf of the Commission, that the Morton Salt Company had what it denominated a retail floor display plan in effect during the early portion of 1942 in certain of its eastern territory, is that correct?

A. Yes, sir.

Q. Would you describe as accurately as possible the geographic area in which the plan in question was offered?

A. It was offered in the territory outlined by the northern boundary of New York City, that is metropolitan New York, south to and including Washington, D. C.; with those eastern seaboard States, with the exception that in Pennsylvania it was not offered west of the Alleghanies.

Q. In delineating that territory, was the boundary line in any instance drawn through a metropolitan sales area?

A. No, sir.

Q. Was it in all cases either exclusive of an entire metropolitan area or inclusive of it?

A. That is correct.

2274 Q. Referring to a metropolitan sales area, will you describe what you mean by that type of an area?

A. Well, as described in my previous statement, the plan was offered in the territory whereby contiguous metropolitan areas were covered, and in no instance was it offered in one area that would deprive another area adjacent to it from participating in it.

Q. So that with respect to New York City, for example, it was offered in the entire corporate limits of New York City and what would be termed the suburban cities or boroughs of New York City, is that correct?

A. Yes, that is the trading area of New York City.

Q. That is true with respect to all other city or urban metropolitan areas involved, is that correct?

A. Yes.

Q. You further testified, I believe, that payments were made on account of the retail store display plan only pur-

suant to contracts between the Morton Salt Company and each of the retailers participating in the plan, is that correct?

A. Yes, sir.

Mr. McBride: I ask the reporter to mark this document Respondent's Exhibit No. 1 for identification.

(The paper referred to was marked Respondent's Exhibit 1 for identification.)

Mr. McBride: I ask that this be marked Respond-
2275 ent's Exhibit No. 2 for identification.

(The paper referred to was marked Respondent's Exhibit 2 for identification.)

Mr. McBride: I ask that this be marked Respondent's Exhibit No. 3 for identification.

(The paper referred to was marked Respondent's Exhibit 3 for identification.)

Mr. McBride: I ask that this be marked Respondent's Exhibit No. 4-A and 4-B for identification.

(The papers referred to were marked Respondent's Exhibits 4-A and 4-B for identification.)

Mr. McBride: Exhibit No. 1, Mr. Examiner, is a retail floor display contract between the Morton Salt Company and Max Doborkin; No. 2 is a like contract between the Morton Salt Company and N. Troiand; No. 3 is a like contract between Morton Salt Company and P. Kowshuk; No. 4-A is a like contract between Morton Salt Company and Gibbstown General Store; No. 4-B is a disbursement statement dated April 1, 1942, from Morton Salt Company to Gibbstown General Store covering the contract identified as Exhibit No. 4-A.

Mr. Haslett, is it stipulated by and between counsel for the Commission and counsel for the Respondent that Respondent's Exhibit No. 1 for identification is the true and correct duplicate original of the floor display merchandis-
ing plan contract between the Morton Salt Company
2276 and Max Doborkin, dated March 16th, 1942?

Mr. Haslett: It is so stipulated.

Mr. McBride: And that Respondent's Exhibit No. 2 for identification is the true and correct duplicate original of the floor display merchandising plan contract between Morton Salt Company and N. Troiand dated March 9th, 1942?

Mr. Haslett: It is so stipulated.

Mr. McBride: And that Respondent's Exhibit No. 3

for identification is the true and correct duplicate original of the floor display merchandising plan contract between Morton Salt Company and P. Kowshuk, dated March 16th, 1942?

Mr. Haslett: That is correct.

Mr. McBride: And that Respondent's Exhibit No. 4-A for identification is the true and correct duplicate original of the floor display merchandising contract between Morton Salt Company and Gibbstown General Store, dated March 20th, 1942?

Mr. Haslett: That is correct, sir.

Mr. McBride: And that Respondent's Exhibit No. 4-B for identification is a carbon copy of the disbursement statement dated April 1, 1942, from Morton Salt Company to Gibbstown General Store showing the payment of $1.50, pursuant to the contract of March 20th, 1942, being Respondent's Exhibit No. 4-A for identification?

Mr. Haslett: That is correct.

2277 Mr. McBride: I offer them in evidence, Mr. Examiner.

Trial Examiner Purcell: Any objections?

Mr. Haslett: No objections.

Trial Examiner Purcell: There being no objections the instruments described will be respectively marked by the reporter as Respondent's Exhibits Nos. 1, 2, 3, 4-A and 4-B.

(The documents referred to, heretofore marked for identification RESPONDENT'S EXHIBITS 1, 2, 3, 4-A and 4-B were received in evidence.)

By Mr. McBride:

Q. Mr. Stratford, I believe that you previously testified with respect to Commission's Exhibit No. 172, is that correct?

(Passing exhibit to witness.)

A. Yes, sir.

Q. And you identified and described the same at the time it was offered in evidence by counsel for the Commission, is that correct?

A. Yes, sir.

Q. Do the names of each of the customers appearing on Respondent's Exhibits Nos. 1, 2, 3 and 4-A appear on the tabulation in Commission's Exhibit No. 172?

A. They do.

Q. I show you Respondent's Exhibits Nos. 1, 2,
2278 3, and 4-A and ask you to state whether or not they are identical except for the date, name and amounts, with the contracts between Morton Salt Company and all of the persons shown on Commission's Exhibit No. 172?

Trial Examiner Purcell: In other words, is that a typical contract?

Mr. McBride: Respondent's Exhibits Nos. 1, 2, 3, and 4-A are typical of all contracts entered into?

The Witness: They are typical.

Mr. McBride: You may cross-examine.

Trial Examiner Purcell: We will have a ten minute recess.

(A short recess was taken.)

Cross-Examination by Mr. Haslett.

Q. Mr. Stratford, you stated this morning in your direct examination that on Commission's Exhibits Nos. 6-A, 7, 8, 10, 11, 12, 13, 14, 15, 16-A, 17, 18, 19, 20, 21, 22, 23, 37, 38, 39, 141, 142-A, 143-A, 155, and 180 that the unit discount granted by Morton Salt Company to the purchasers of the commodities that are shown on the exhibits that I have just stated appeared on the invoice and was not carried through on the invoice price. Why was that done?

Mr. McBride: Mr. Examiner, a technical objection. Mr. Haslett refers to the unit discount. Because there
2279 are two types of unit discounts referred to from time to time in this record I should like to have Mr. Haslett identify that as a carload discount in that particular case.

Mr. Haslett: I accept the amendment and will refer to it as a carload discount.

By Mr. Haslett:

Q. Why was that shown on the invoice in some instances and was not shown on the invoices in other instances?

A. That largely depended upon the time that scales were issued incorporating the prices to be used, legislation to be followed in certain sales territories; and also somewhat depended on what happened to be the practice in certain areas. In other words, in certain sales areas the practice was generally to incorporate the carload discount into

the extended price; in other areas it was not. Just a matter of what happened to be the custom at the time.

Q. You mean to say that in different areas where Morton sells its products it has different methods of billing its various customers?

A. Well, it is not exactly that. It depends upon the times in which the invoices were rendered, when the scales were made up. In other words, there are two factors involved, one the trading area, and the other the time in which the scales were issued.

Q. In order that we may be overly clear about the
2280 matter I am going to hand you Commission's Exhibit No. 6-A, and the document that I am handing you is 4319-1, and you will find the scales in this document, and if you will refer to the scale that would cover the date of Commission's Exhibit No. 6-A and make the explanation in connection therewith I will appreciate it very much.

(Passing document to witness.)

A. There is no scale in here that would cover that invoice.

Mr. Haslett: Off the record, please.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Stratford, have you now found the scale that would cover that particular invoice, that is, Commission's Exhibit No. 6-A?

A. I believe I have.

Q. And is that known as Commission's Exhibit No. 153?

A. Yes, sir. There is nothing in the instructions to this scale with regard to carload discount, whether it be included in the net price or shown as a separate figure. There is, however, a penciled notation on this scale that represents the prices subject to one unit discount to carload buyers.

Q. Well, that would be a unit discount and not the regular carload discount granted customers who purchase on that basis?

2281 A. In this instance the unit discount is the carload discount.

Q. And then would Commission's Exhibit No. 153 show

the unit discount or the carload price on the items that appear on Commission's Exhibit No. 6-A?

A. The prices in this scale are reflected in the list prices in Exhibit No. 6-A, and are further subject to the carload discount which is listed under the discount column.

Q. On Commission's Exhibit No. 6-A?

A. Yes, sir.

Q. And do the items that appear under the discount column on Commission's Exhibit No. 6-A also appear on Commission's Exhibit No. 153?

A. No, they do not. There is no discount column listed in this scale other than this penciled notation.

Q. Well, how were the figures under the discount column on Commission's Exhibit No. 6-A arrived at?

A. That is our regular carload discount used, regardless and irrespective of territory.

Q. Oh, I see. Then I misunderstood you, because I was under the impression that you said that in certain territories the discount is shown on the invoice price and in other territories it is reflected on the list price or the sale price of the commodity.

A. Yes, but the discount itself is always the same.

2282 Q. The discount remains the same no matter in what territory the commodity is sold?

A. Right.

Q. And would a discount that appears under the discount column on Exhibit No. 6-A appear on any of the scales that have been introduced as Commission's exhibits?

A. I believe so.

Q. They would appear on one of the scales?

A. Yes, sir.

Q. And what is that exhibit, sir?

A. This is Exhibit No. 2-A in which is included a column labeled "Carload discount" and listed under which is the discount for each of the items in that scale.

Trial Examiner Purcell: What is the page number of that?

The Witness: This is page 20.

By Mr. Haslett:

Q. I believe I asked you why, Mr. Stratford, that the discount is shown on the invoice in some instances and not shown on the others, and I believe you replied that it was

due to the various customs in various trading areas, is that correct, sir?

A. Yes, sir.

Q. And that custom has been in effect for a long time?

A. Yes, sir.

2283 Q. Prior to 1936?

A. Yes, sir.

Q. Is that a custom of your company or is that a general custom of all companies?

A. Well, I know it is with our company, and I am quite sure it must be in others too, because that would be the reason that you would have this custom established as a trade practice in certain areas.

Q. Now, you testified this morning, Mr. Stratford, that on Commission's Exhibit No. 189 the item appearing under the discount column on that particular exhibit included the competitive adjustment as well as a unit discount; will you explain why that was done on that particular instance?

A. If I recall, I did not state that the carload discount was included in the discount column. The discount column in this Exhibit No. 189 was the competitive adjustment and that the discount, the carload discount was included in the extended price under the list column.

Q. I see. Well, if I misunderstood you, I am very sorry. I did not want to misquote your testimony. Why was the competitive adjustment included under the discount column on that particular invoice, if you know?

A. No, I do not know why, other than at times our invoices on which competitive adjustments were made may have been in a column headed "Discount" or may
2284 have been in a column headed "Competitive adjustment."

Q. You are not prepared to state the real reason for it?

A. I do not believe there is any reason for it other than to save a few letters on the part of the biller.

Q. I see. But the invoice price, that is the price on the last column reflects the carload discount as well as the competitive adjustment, is that correct, sir?

A. No, sir, it only reflects the carload discount in the list column. In other words—

Q. I am talking about the last column there.

A. Oh, pardon me. Yes.

Q. That does reflect both the carload and the competitive adjustment?

A. That is correct.

Q. How could you arrive at the competitive adjustment figure? By referring to the scale that had the carload discount?

A. You arrive at the competitive adjustment figure by looking—you mean on this invoice?

Q. That is right.

A. (Continuing) —by reviewing the invoice amount as recorded under the discount column.

Q. I do not think you quite understand me. You have there on the first item a discount of 21 cents.

A. Yes, sir.

Q. Does the 21 cent item reflect a competitive ad-
2285 justment figure or does it also reflect a carload discount figure; is it a combination of two?

A. It reflects only a competitive adjustment.

Q. So the competitive adjustment on that particular item was 21 cents?

A. That is right.

Q. And the last column over, the column that shows the final figures reflects both items?

A. Yes, sir.

Trial Examiner Purcell: In other words, that last column is the net figure that the customer is supposed to pay, do I understand?

The Witness: That is correct.

By Mr. Haslett:

Q. Now, Mr. Stratford, this morning you testified in reference to a number of exhibits beginning with No. 6-A and ending with No. 191, that such items that appear on those various exhibits were carload shipments; do you remember testifying as to that?

A. Yes, sir.

Q. How do you know they were carload shipments?

A. Because I reviewed each invoice and found that they represented salt purchases moved in carloads.

Q. They might be a part of a carload?

A. That is correct.

2286 Q. But on what you call a pool car basis?

A. Yes, sir.

Q. You can also tell from the invoice whether it is on a pool car basis or not, can you not?

A. You can.

Q. You also testified in connection with Commission's Exhibit No. 13 that a unit discount was given to C. D. Kenny Company because they purchased from your company $50,000 worth of table salt during twelve consecutive month period; do you remember testifying to that?

A. Yes, sir.

Q. You did not mean to state that each branch of C. D. Kenny Company purchased that amount, did you, sir?

A. No, sir, that was all branches.

Q. That was combined purchases of all of C. D. Kenny's branches which was in excess of $50,000?

A. Yes, sir.

Q. And that is true also as to the A. & P. Tea Company?

A. Yes, sir.

Q. There wasn't any single A. & P. branch that purchased $50,000 worth of table salt from Morton Salt Company during a twelve consecutive month period; that the purchases are the result of combined purchases of all A. & P. branches or warehouses during the twelve consecutive month period and it was on that basis that the unit discount was granted?

2287 A. It was on the basis of the combined purchases.

Q. I see. Now you testified this morning in connection with Commission's Exhibit No. 72 that you made an adjustment to meet the competition of other processors of salt that sold within the city of New Orleans. You made a particular adjustment on that exhibit. Do you remember testifying to that?

(Passing exhibit to witness.)

A. Yes, sir.

Q. Does the Morton Salt Company encounter competition of other processors of salt in other parts of the state?

A. Yes, sir.

Q. They have other processors selling salt in practically every section of the state, isn't that true, sir?

A. That is true.

Q. Did you make the competitive adjustment to all customers within the State of Louisiana at the time you made your adjustment to Covington?

A. I believe we did. However, it was not because of making it to one customer in one town in the State of Louisiana that we would extend that price to every buyer in the state. It depended on where we ran into that com-

petition by the other processors. In other words, a competitive salt producer may not have been quoting this adjusted price of 65 cents other than at Covington,
2288 Louisiana. But if I recall the circumstances existing in October, 1940, I believe that price of 65 cents was made by us in all of Louisiana.

Q. If you made the adjustment to a particular customer in a particular town and did not make the adjustment to other customers in the surrounding towns, it would be due to the fact that the competition did not require you to do so, is that true?

A. It would be because, to our knowledge, our competitors were not quoting such a price or lower price in those surrounding towns.

Q. Do you know of any instances where you have made an adjustment to a particular customer in one town and have failed to make the same adjustment to a competitor of that customer in another town?

A. No.

Mr. McBride: If the Examiner please, I will have to object to that question because we have a reference in Mr. Haslett's question to a customer in one town and a competitor in another town. Geographically and competition-wise that question carries with it a tremendous scope, far beyond that about which we argued and bickered during the time of the Commission's hearing.

Trial Examiner Purcell: I will overrule the objection. If in fact there was no such competition the witness can answer; if there was competition the Commission is
2289 entitled to go into it.

By Mr. Haslett:

Q. Is it not a fact, Mr. Stratford, that the Morton Salt Company have practically the same competition in New Orleans that they have in other sections of the State of Louisiana?

Mr. McBride: I object to that. I do not think that there is anything in the direct examination or anything else that warrants that question in the first place. In the second place I do not know how this—

Trial Examiner Purcell: We are under a general heading here, are we not—

Mr. McBride: Oh, I am sorry, I think I misunderstood the question.

Trial Examiner Purcell: Read the question, please.

(Question referred to read by the reporter as recorded.)

Mr. McBride: I am sorry, I did misunderstand the question. I will withdraw the objection.

The Witness: It has. It has, with respect to competition by other salt producers.

2290 By Mr. Haslett:

Q. Do you have International Salt Company as a competitor in practically every place where you sell in Louisiana? That is so, isn't it?

A. I would assume so, if they had sales representatives.

Q. And Jefferson Island Salt Company, and Carey Salt Company, they have sold in practically all communities where your Company markets its products?

A. In Louisiana.

Q. I see. How does it come to the attention of the officials of the Morton Salt Company that another processor of salt has reduced the price on a particular grade of salt to one of its customers?

A. Well, there are many ways in which that information is determined by our field representatives. Generally, it is by the customer himself telling our field representatives that he has purchased, or been quoted salt by one of our competitors, competitive producers, at a price below our published basis.

That information is related to Chicago, and then we decide whether or not we care to meet it, make the same price, or a price that may be between our quoting figure, and the price that the competitor has offered.

Q. Well, does Morton Salt Company require any documentary proof of the price offered by a competi-

2291 tor to a particular customer?

A. We make every effort to secure it.

Q. Have they made so-called competitive adjustments on the word of a customer that he had been offered a lower price by one of Morton Salt Company's competitors?

A. Well, we have found it extremely difficult in all instances to get customers to sign any statement. It does not necessarily mean, if they do not sign one, that they have not received that competitive price. More often than not it is reflected in their resale price.

Q. Have you finished?

A. I have.

Q. Then, you mean that if one of Morton Salt Company's customers had received a lower price from one of Morton's competitors, that it is a possibility that that lower price might be reflected in the resale price of the salt?

A. There is that possibility.

Q. In testifying this morning, in regard to Commission's Exhibits beginning with 34-A and ending with 191, were all those competitive adjustments made at the request of the customer?

Mr. McBride: Excuse me just one moment. What series did you refer to?

Mr. Haslett: 34-A, and ending with 191.

Trial Examiner Purcell: Was that the second bunch?

2292 Mr. McBride: I will have to object to that, because there was no testimony in the record this morning, or even any questions about competitive adjustments with respect to that series of exhibit numbers.

Mr. Haslett: Would you inform me as to what series of exhibit numbers it was?

Mr. McBride: That series, Nos. 34-A to 191, was referred to in direct examination as to whether or not the carload price with respect to the items appearing on each of those invoices were extended net, or whether the carload discount was shown as a separate item on those invoices.

Trial Examiner Purcell: It was the third batch, then, I think.

Mr. Haslett: It was the third bunch, then, beginning with 6-A, and ending with 191, is that correct?

Mr. McBride: No. What is it you want in your question.

Mr. Haslett: I wanted to know what series of Exhibits that we talked about this morning reflected a competitive adjustment.

Mr. McBride: Beginning with 72, and ending with 189.

Mr. Haslett: Beginning with 72, and ending with 189, yes, that is right. Then I will reframe my question, Mr. Stratford.

2293 By Mr. Haslett:

Q. Beginning with Series 72, and ending with 189, having particular reference to Commission's Exhibits marked inclusively those numbers, 72 to 189, were those

competitive adjustments that appear thereon made at the instance of the customer of the Morton Salt Company?

A. No, sir.

Q. Will you tell us at whose instance those competitive adjustments were made?

A. They may have been at the instance of the customer, but I am quite positive it would not have been in each case, because we found that those prices were being quoted by our competition, that is, other salt producers, generally within that particular area; as covered by such invoices.

Now, it did not have to be by a customer actually telling us. It may have originated first through deduction from invoice, or through prices reflected in the retail trade, price circulars that they may have issued.

Q. The information can come to you from several different channels, then?

A. That is right.

Q. By the word of the customer, by the resale price of the salt reflected in the lower price of a competitor, and by circulars being distributed by various competitors, is that correct, sir?

2294 A. Yes, or by actual deduction.

Q. From the invoice?

A. From the invoice, and a statement to the effect that they have been offered and purchased salt at such prices, by other salt companies.

Orleans that they have in oher sections of the State of and the price that the competitor has offeffred.

Mr. Hazlett: I wanted to kno wwhat series of Exhibits but I a mquite positive it would not have been in each

Q. And we have an example of that in the record. I think Mr. McBride referred to it this morning, where someone had taken off in pencil a discount from the invoice price, and which was a competitive adjustment, isn't that right?

A. Yes, sir.

Q. Now, does the Kroger Grocery & Baking Company purchase from the Morton Salt Company $50,000 worth of table salt per year?

A. They purchase in excess of that amount a year.

Q. And it is for that reason that they get the one unit discount?

A. Yes, sir. We identify that as table salt.

Q. Table salt?

A. Yes, sir.

Q. And they also purchase in excess of 50,000 cases of blue label salt per year?

A. Yes, sir.

Q. Is the 50,000 cases purchased by the Kroger Grocery & Baking Company of the round package blue label free running and iodized salt included in the $50,000 pur-
2295 chase of table salt per year, in which they receive the one unit discount?

A. Yes, sir. You say cases, you mean the money value of the 50,000 cases is included in the gross amount, which is in excess of $50,000, representing all table salt purchases?

Q. That is right, sir. Now, you testified this morning, Mr. Stratford, that The Colonial Stores, Inc., of Atlanta, Georgia, receive a ten cent per cent allowance on the blue can, or blue label salt. Does Colonial Stores purchase from the Morton Salt Company 5,000 cases of that particular type of salt during a twelve consecutive months period?

A. They purchase in excess of 5,000 cases.

Q. And you also testified that your Company grants to this particular concern, that is, the Colonial Stores, Inc., a one unit discount on table salt, on all grades of table salt for the reason that some other producer or processor of salt was granting a one unit discount to the Colonial Stores, is that correct, sir?

Mr. McBride: If the Examiner please, I will object, unless Mr. Haslett confines himself in those questions regarding the unit, to table salt other than the blue can.

Mr. Haslett: I did not mean to include the blue can. It was on all other labels of table salt.

By Mr. Haslett:

Q. Is that correct, sir?

A. That is correct.

2296 Q. And do you know whether or not, of your own knowledge, the Colonial Stores, Inc., purchase in excess of $50,000 worth of table salt from some other competitor?

A. No, I don't know that as a fact.

Q. They don't purchase that much from you, do they, sir, from your Company? They don't purchase $50,000 worth of table salt from your Company, do they, sir?

A. I don't know. I don't think so.

Q. There wouldn't be any reason for granting the

discount on a competitive basis if you granted it on a quantity basis, would there, sir?

A. If they did qualify on the basis of $50,000 of purchases from us, it would be very recently.

Q. When you use the word "qualify", you mean the requirements of your company?

A. Yes, sir.

Q. You testified that Morton Salt Company granted to Consolidated Companies, Inc., of Plaquemine, Louisiana, a 7½ cent per case allowance on blue label free running and iodized salt, and that such as done due to the fact that some other processor of salt was selling them salt at that price, is that correct, sir?

A. Well, not necessarily at that price. They were selling, I believe, probably a good deal lower price, but it was necessary for us to make that allowance in

2297 order to continue to enjoy a portion of their business.

Q. I see. Do you know the price at which the competitor was selling?

A. I don't know what the actual price is, at this moment, no.

Q. It would be below the price at which your Company was selling?

A. Considerably below.

Q. Because there is no other competitor that is selling blue can salt at $1.50 per case, is there, sir?

A. Not to my knowledge.

Q. There is no other competitor selling blue can salt, period, isn't that correct, sir?

A. Right.

Q. So the 7½ cents per case allowance was to bring you closer to the competition, but not to meet the competition, is that correct, sir?

A. Yes, that is correct.

Q. You have never gotten down to the price where you meet the lower price of the competitor, have you, sir?

A. No, sir.

Q. It is always a differential between the lower price and the price at which you have been selling the Consolidated Companies, Inc.?

A. You are referring only to Consolidated in this instance?

2298 Q. Yes, sir.

A. That is correct.

Q. And you testified that since December of 1938, that

your Company has been granting a one unit discount to the Consolidated Companies, Inc., upon their purchases of all other grades of table salt, not including the blue label salt, and that such was done due to the fact that some other processor of salt was granting this company a unit discount off the invoice price?

A. A unit or more, that is correct.

Q. A unit or more. Do you know the name of the other company that was granting that discount?

A. I believe it was Myles.

Q. Myles Salt Company?

A. Yes.

Trial Examiner Purcell: How is that spelled?

The Witness: M-y-l-e-s.

By Mr. Haslett:

Q. Is the Myles Salt Company a subsidiary of any large salt producer?

A. No, sir.

Q. It is an independently owned company?

A. As far as I know.

Q. And there is no connection between Myles and the Morton Salt Company?

2299 A. None whatsoever.

Q. Consolidated Companies, Inc., of Plaquemine, Louisiana, doesn't purchase from the Morton Salt Company $50,000 worth of table salt during any twelve consecutive months period, do they, sir?

A. No, sir.

Q. Is it far below that figure, if you know, sir?

A. I believe it is. We only enjoy a portion of that business.

Q. Is the Consolidated Companies, Inc., and Colonial Stores, Inc., the only two customers of the Morton Salt Company that receive an additional unit discount for the reason that some other processor of salt is granting a unit discount to those two particular customers?

A. No, I don't think they are the only ones.

Q. There are others?

A. Yes, sir.

Q. But they are the only ones that are mentioned in this record?

A. Today, yes.

Trial Examiner Purcell: What was the answer?

The Witness: They are the only ones that have been mentioned in this record today.

By Mr. Haslett:

Q. Today, or to date?

2300 A. Today.

Q. Now, you testified in connection with Commission's Exhibit No. 41, that American Stores, Inc., of Philadelphia, Pennsylvania, received from the Morton Salt Company a 15 cent per case allowance on the blue package salt.

Now, does the American Stores, Inc., of Philadelphia, purchase 50,000 cases of round package blue label salt from the Morton Salt Company during a twelve months consecutive period?

A. They do.

Q. How long have they been in that classification?

A. For several years, seven or eight years, I would judge. Perhaps more.

Q. And do they purchase any other grades of salt from the Morton Salt Company other than the blue can salt?

A. Yes, they do.

Q. Do they receive any unit discounts on those purchases?

A. They receive a unit discount on the other grades of table salt, which is our quantity discount for purchases in excess of $50,000.

Q. And they do purchase in excess of $50,000 from your Company?

A. They do, yes.

Q. No single unit of American Stores would purchase 50,000 cases of Morton's blue can free running and

2301 iodized salt during a consecutive twelve months period, would they?

A. I don't know.

Q. That is the combined purchases of all American Stores, Inc.?

A. The combined purchases of all American Stores, Inc., is in excess of 50,000 cases.

Q. And it is on that requirement that the Morton Salt Company allows a discount of 15 cents per case on the blue can salt?

A. Yes, sir.

Q. Now, Mr. Stratford, we talked this morning about the promotional plan that Morton had in effect, and I think

during the Commission's direct case that was gone into quite extensively, but I did want to find out from you, if you know, sir, how Morton differentiates between the border line customers, that is, the customers that are inside the zone receiving this special display allowance, and those that might be right outside of this zone, not receiving it?

2302 A. We have taken trading areas, and we had no difficulty whatsoever in the operation of the plant, of overlapping into one trading area where we did not operate the plan.

Q. I see. Morton has never made that plan available to all of its customers throughout all trading areas, has it, sir?

A. No, sir.

Q. It has only made it available to customers within a zone of which they have set the limits themselves?

A. That is correct. It is done because we wanted to put some special promotional effort behind our blue package, inasmuch as in the east there is intensive competition on the table salt. A great deal of money is being spent by other salt producers on their round package and square package table salt. We felt some special promotion on our part was needed in that area so affected.

Q. And your company didn't feel it was necessary to use the plan in other territories where there is a greater consumer acceptance of your product, is that right, sir?

A. Well, not necessarily because it was greater consumer acceptance elsewhere, but perhaps because our competitors were not spending as much money in the advertising and merchandising of their product in other areas.

Q. How long was that plan in effect, if you know, sir?

A. It was in effect for three months, January, February, and March of 1942.

2303 Q. And it hasn't been effectuated since that time, is that right, sir?

A. We have started it again, yes, sir.

Q. In the same area?

A. That same area.

Q. Did you say not the same area?

A. In the same area.

Q. I think we covered that extensively during the Commission's direct case, and I don't want to clutter the record up with a lot of duplication of testimony.

Mr. Stratford, does Commission's Exhibit No. 172, which is this document that I show you, represent the entire amount of money expended by the Morton Salt Company in connection with the promotional plan, floor display plan that we have just been referring to?

(Passing exhibit to witness.)

A. Yes, sir.

Mr. Haslett: Mr. Examiner, I have no further questions at this time. May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, that concludes the cross-examination of this witness, and I now tender him to Mr. McBride for any further redirect that he may care to
2304 go into.

Trial Examiner Purcell: Go ahead.

Redirect Examination by Mr. McBride.

Q. Mr. Stratford, I believe you testified that the unit carload discount is the same, and has been the same, throughout the last several years?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. And that is what you have referred to as the unit discount on carload shipments, as distinguished from a quantity discount?

A. Yes, sir.

Q. Then if a particular customer is invoiced on a particular item, with the carload discount appearing in one column of the invoice, and the list price appearing in another column on the invoice, and the extension appearing in the third column on the invoice, would the net price on that salt item, or salt items, be the same to that customer as if the invoice were billed not without showing the list column, and the carload discount column?

A. That is right.

Q. So that with respect to the net prices, so far as the respective customers are concerned, the net prices
2305 are the same, whether invoiced as testified to on Series 6-A to 180, referring to Commission's exhibits,

or whether invoiced on the basis testified to on Series 34-A to 191, referring to Commission's exhibit numbers?

A. That is correct.

Q. And the distinction between those groups, then, is in the method and appearance of the invoice only, and not as to the net carload price of the respective customers involved in any of those exhibits, is that correct?

A. That is right.

Q. You testified with respect to Kroger Grocery & Baking Company on your cross-examination that the 50,000 cases, or more, of the blue can purchased by Kroger Grocery & Baking Company was included in the discount based on the $50,000.

In answering the question framed in that fashion, did you mean to testify that a unit discount was paid to Kroger Grocery & Baking Company on its blue can purchases in addition to the 15 cent quantity discount paid on its blue can purchases?

A. No, sir. I thought that was made clear in a subsequent statement that I made.

Trial Examiner Purcell: The witness made that clear in a subsequent statement, Mr. McBride. I think it is clear in the record.

Mr. McBride: I want to clarify it because of the nature of Mr. Haslett's question.

By Mr. McBride:

Q. So that the dollar value of the blue cans are included in determining whether or not the customer qualifies as a $50,000 buyer of table salt, but does not constitute a basis in and of itself for the payment of a unit discount on the blue can, is that right?

A. That is right.

Mr. McBride: That concludes my examination.

Mr. Haslett: I have just a couple more questions, so that the record may be doubly clear on that particular subject.

Recross Examination by Mr. Haslett.

Q. Mr. Stratford, am I correct when I state that any purchaser of Morton's round package salt, who purchases 50,000 cases of the blue label free running and iodized salt, is also in the classification of the customers who receive a one unit discount on all other grades of table salt?

A. They are, inasmuch as their money value of 50,000 cases of blue package is in itself in excess of $50,000 of table salt purchased, and, therefore, qualifies it to participate in the quantity discount. It applies to all buyers of table salt in excess of $50,000, in any twelve consecutive months.

Q. So if you have a particular customer who pur-
2307 chases $50,000 worth of blue package salt, 50,000 cases of blue package salt during a twelve consecu-tive month period, and purchases 1,000 cases of, say, the five cent salt, then he would get the unit discount on the five cent purchase, as well as receiving the 15 cent allowance on the blue package salt, isn't that correct, sir?

A. That is correct.

Mr. Haslett: I think that is all, sir.

Mr. McBride: I have no further direct examination.

Trial Examiner Purcell: You are excused.

(Witness excused.)

2308

Room 1123,
New Post Office Bldg.,
Chicago, Illinois,
Tuesday, October 6, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for Respondent.

2309 Mr. McBride: Mr. Examiner, before proceeding with my next witness on behalf of the Respondent, I should first like to call attention to an error in the record arising out of an inadvertent misunderstanding of the question propounded to Mr. Stratford at yesterday's hearing, the question being the last one appearing on page 2259 of the transcript with the answer to that question appearing as the first line on page 2260 of the transcript.

Mr. Haslett, is it stipulated by and between counsel for the Commission and counsel for the Respondent, after our discussion regarding the question and answer in question, that the answer appearing in the first line on page 2260 of the transcript, being the answer to the last question appearing on page 2259 of the Transcript, should read:

2310 "No, sir, they were not permitted a 13 consecutive months period" in lieu of the answer as it now appears?

Mr. Haslett: That is correct and it is so stipulated.

Mr. McBride: I call as the next witness on behalf of the Respondent, Morton Salt Company, Mr. Daniel Peterkin, Jr.

DANIEL PETERKIN, JR., was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Will you state your name and address?

A. Daniel Peterkin, Jr., 310 South Michigan Avenue, Chicago.

Q. What is your occupation?

A. President of the Morton Salt Company.

Q. How long have you held that position?

A. Since March, 1941.

Q. How long prior to that time were you associated or employed by the Morton Salt Company?

A. Since October, 1928.

Q. Are you the same Daniel Peterkin, Jr., who

2311 previously testified as a witness on behalf of the Commission?

A. I am.

Q. I believe you testified as a witness on behalf of the Commission, Mr. Peterkin, to various discounts, various quantity discounts offered by the Morton Salt Company, is that correct?

A. That is correct.

Q. Will you describe as clearly as you can each of the quantity discounts offered by the Morton Salt Company; referring now to the period from 1936 to date.

A. In 1936 and to date the Morton Salt Company has

had in effect a carload discount and a quantity discount applied to purchasers of $50,000 worth of table salt in any twelve consecutive months period; a discount applying to purchasers of 5,000 cases of Morton free running or iodized table salt in any twelve consecutive months period; and a discount applying to 50,000 case buyers of Morton free running and iodized table salt within any twelve consecutive months period.

Q. Under what circumstances is the carload discount given?

A. The carload discount is given to any purchaser who buys a carload unit of salt.

Q. Is it important what kind of salt moves in that carload shipment?

A. No, it is not.

2312 Q. It applies to carload shipments of all types of salt, is that correct?

A. That is correct.

Q. And will you describe the amount of the discount given where carload shipments are involved?

A. The carload discount amounts to approximately 5 per cent of the net works plant basis.

Q. And is that carload discount given so long as shipments move under carload lots, regardless of what other quantity discounts may be given a particular customer?

A. That is correct.

Q. Now, will you describe the amount of the discount given for purchasers of 5,000 cases or more of Morton's blue package in any twelve consecutive months period?

A. The discount applying to Morton's blue package in that period is 10 cents per case.

Q. And the same question with respect to the discount given to customers buying 50,000 cases or more of Morton's blue package in the twelve months consecutive period?

A. The discount applying thereon is 15 cents per case.

Q. Now, with respect to customers receiving the 15 cents discount by reason of purchasing 50,000 cases or more of the blue package in any twelve months consecutive period, is that 15 cents paid in addition to the 10 cents given 5,000 case purchasers?

2313 A. No, it is not.

Q. So that the entire discount given 50,000 case purchasers is 15 cents per case and not 25 cents per case, is that correct?

A. That is correct.

Q. As to the entire quantity purchased during the twelve consecutive months period?

A. That is correct.

Q. Now, with respect to purchasers of $50,000 or more of table salt in any consecutive twelve months period, will you describe the amount of the discount granted in that case?

A. The amount of the discount applying in that category is an amount approximately equal to 5 per cent of the net works basis on the item to which it applies.

Q. Now, in computing whether or not a customer attempting to qualify for that discount has in fact qualified, do you include or exclude the dollar value of the Morton's blue package purchased by that customer during the period in question?

Mr. Haslett: One second, please. I want to note an objection to the question. If counsel still has the same meaning for the word "qualification" as he had yesterday, then I will withdraw my objection. If he is willing to state that the use of the word "qualify" throughout this hearing is that which Morton requires one to purchase in
2314 order to be eligible for the so-called discount, then I will withdraw my objection.

Mr. McBride: Mr. Examiner, let the record show that with respect to questions propounded to this witness or any other witness whom I may call on behalf of Morton Salt Company, to the extent that I use the word "qualify" or "qualifying" in connection with any questions regarding quantity discounts I use the word not by way of legal or factual connotation—

Trial Examiner Purcell: Or intentment.

Mr. McBride: (Continuing.) —or intentment, but only as a description of the requirements of the Morton Salt Company for its customers as a means of receiving any of the discounts to which the word "qualification" is applied.

Trial Examiner Purcell: That statement is received, sir. You may proceed.

Mr. McBride: Will the Reporter please read the last question?

(The question above referred to was read by the Reporter.)

The Witness: The dollar value of Morton's blue package is included in this computation.

By Mr. McBride:

Q. So that if a given customer in a given twelve
2315 consecutive months period purchased $40,000 of blue package salt from Morton Salt Company and $20,000 of other types of table salt from the Morton Salt Company you would regard that customer as having qualified as a $50,000 discount customer, is that correct?

A. That is correct.

Trial Examiner Purcell: Let me have that question again, please.

(The question above referred to was read by the Reporter.)

By Mr. McBride:

Q. Using that same example, Mr. Peterkin, with respect to what portion of those $60,000 purchases to that particular customer would the quantity discount, referring now to the unit discount given a $50,000 customer, be paid?

A. The amount paid would be computed from the approximate 5 per cent net plant basis applied to the $20,000 portion of other grades of table salt.

Q. And there would be no unit discount, using a short description of the discount, paid on the $40,000 of blue package purchases, is that correct?

A. None other than the applicable discount of 10 cents per case.

Q. Mr. Peterkin, in computing whether or not a customer has qualified as a $50,000 discount customer, in
2316 so far as that customer's purchases of blue package are concerned, what price do you use for the blue package in making the computation, the net dollar value or the delivered price?

A. On purchases of blue package the net dollar value and the delivered price are the same. Therefore, the figure used is either the net dollar value or the delivered price.

Q. So that you would use either $1.50 or $1.60 according to whether it was a carload movement of the blue package or less than carload movement of the blue package, is that correct?

A. That is correct.

Q. And you would not use the net return that the Morton Salt Company realized in the blue package?

A. No.

Q. And in arriving at the amount of value of the other types of table salt involved in determining whether or not a customer is qualified as a $50,000 customer, would you use the f.o.b. plant price of those other grades of table salt?

A. Yes, that is the only price we have on those grades.

Mr. Haslett: Off the record a minute.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

2317 By Mr. McBride:

Q. Can you state, Mr. Peterkin, when the 10 cent per case discount on the blue package purchases of 5,000 case purchases or better was placed in effect by the Morton Salt Company?

A. To the best of my recollection about 1927 or 1928.

Q. And when was the 15 cent quantity discount on the blue package put in effect by Morton Salt Company?

A. At the same time.

Q. They were put into effect simultaneously in 1927 or 1928?

A. That is right.

Q. When was the carload discount put into effect which you referred to in your testimony?

A. The carload discount has been in effect so long as the life of the present company.

Q. And with respect to the unit discount offered to $50,000 or better purchasers of table salt when was that put into effect by Morton Salt Company?

A. That was put into effect, I believe in 1933 or 1934.

Q. And all of those have been in effect at all times since?

A. That is right.

Q. What means does your company use, Mr. Peterkin,
of designating the fact that discounts of the type you
2318 have described are offered to customers of the Company?

A. I am sorry, I did not understand the first part of the question.

Trial Examiner Purcell: Read the question, please.

(The question above referred to was read by the Reporter.)

Mr. Haslett: That is awfully ambiguous to me, too. I was wondering if Mr. McBride could clear that for us.

Mr. McBride: Let me withdraw the question and I will restate it.

By Mr. McBride:

Q. Mr. Peterkin, does your Company publish the fact to its salesmen in some form or other, that the Morton Salt Company offers a discount of the type you have described to its customers?

A. Yes, we do.

Q. Will you describe the manner in which that is done?

A. These discounts are published on all of our scales and in bulletins which are sent from time to time to our branch offices and to the sales department personnel.

Q. Are those scales and bulletins that you referred to in your last answer, printed and published by the Morton Salt Company for use by its own salesmen or for use by the public generally?

A. They are printed primarily for use by our own 2319 sales department but are available to any one who is interested in purchasing our products.

Q. In what manner then are the customers of the Morton Salt Company informed of the availability of the discounts to which you have testified?

A. They are informed both through the printed publications and through statements made to them by our sales representatives or our sales offices.

Q. Who determines, Mr. Peterkin, whether or not any given customer is entitled to receive any of the discounts to which you have testified?

A. That is determined by the Chicago office of the Morton Salt Company, which is the main office, and in some instances by the branch billing offices.

Q. Do the individual salesmen in any case have the authority to allow such a discount or determine that such a discount is due a given customer?

A. No, they do not.

Q. So that the qualification of any given customer for any of the discounts would be determined from the sales records and tabulating records of the Morton Salt Company at its general offices, or at one of its branch billing offices to which you referred, is that correct?

A. That is correct.

Q. Can you state whether or not all of the cus-
2320 tomers or prospective customers of the Morton Salt Company have been apprised of the fact that the Morton Salt Company offered any or all of the quantity discounts to which you have testified?

Mr. Haslett: I object to that, Mr. Examiner.

Trial Examiner Purcell: Let me hear that again, please.

(The question above referred to was read by the Reporter.)

Mr. Haslett: That knowledge could not be within the confines of any one's particular thinking. That is beyond the scope of anyone's knowing whether all of the customers of Morton Salt Company have been apprised of the fact that these discounts are available.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. The objection is sustained.

By Mr. McBride:

Q. Mr. Peterkin, does your company have the policy of having its salesmen advise all of its costumers on all occasions that quantity discounts of any of the type to which you have testified are being offered by the Morton Salt Company?

A. The information is available to all of the sales-
2321 men, and it is assumed that they pass this information on to the buyers who are potential purchasers of sufficient quantity of salt to warrant their receiving the discounts.

Q. So that wherever there is any possibility of likelihood of a customer being potentially qualified as a discount customer of one type or another, then it is the policy of your company to inform that customer of the existence of the applicable discounts, is that correct?

A. Not only the policy, but the sincere desire that those customers be advised.

Q. The purpose of that I take it, would be to aid in promoting the sales and increase the volume of the Morton Salt Company?

A. That is correct.

Q. Mr. Peterkin, I show yo Commission's Exhibit No. 1 and ask you to examine the same and identify from that

exhibit which of the items appearing thereon come within the classification of table salt?

(Passing exhibit to the witness.)

A. The items in that classification as shown in this scale, Commission's Exhibit No. 1, are indicated opposite the words "Star, Triangle, Perfection or Alamo" table salt in the left hand margin of the first tabulated page; the Morton Free Running and Morton Iodized table salt; the Rock Crystal, Triangle or R. S. V. P.; and the Star Kosher salt.

2322 Q. Then all other items appearing on Commission's Exhibit No. 1 and on the first tabulated page of that exhibit would not be regarded as table salt items?

A. That is correct.

Q. And no quantity discount would be paid to $50,000 purchasers on those other items, is that correct?

A. That is correct.

Mr. Haslett: Off the record.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. Now, Mr. Peterkin, I ask you to examine Commission's Exhibit No. 2-A and will you identify from that exhibit which are the table salt items?

(Passing exhibit to the witness.)

A. In this Exhibit No. 2-A the table salt items are shown on the first tabulated page, Morton's Free Running, Morton's Iodized salt; the several sizes opposite the heading Square Cartons; the several sizes shown opposite the heading Morton's Table Salt; and the Star Kosher Salt.

Q. And all other items on that first tabulated page of Commission's Exhibit No. 2-A would not be regarded as table salt items, is that correct?

A. That is correct.

2323 Q. Now, referring to Commission's Exhibit No. 3-A, will you identify on that exhibit the table salt items?

(Passing exhibit to the witness.)

A. On Exhibit No. 3-A the table salt items on the first tabulated page are those opposite the heading Kleer Table Salt, Square Cartons and opposite the heading Kleer Table Salt.

Q. And all other items appearing on Commission's Exhibit No. 3-A would not be regarded as table salt items, is that correct?

A. That is correct.

Q. Now, referring to Commission's Exhibit No. 4-A will you identify the table salt items on that exhibit?

(Passing exhibit to the witness.)

A. The table salt items on this exhibit appear on the first tabulated page as Morton's Free Running, Morton's Iodized salt; opposite the heading Square Cartons; opposite the heading Morton's Table Salt; and Star Kosher.

Q. And all other items appearing on Commission's Exhibit No. 4-A would not be regarded as table salt items?

A. That is correct.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

2324 By Mr. McBride:

Q. Now, referring to Commission's Exhibit No. 5-A will you identify the table salt items on that exhibit, Mr. Peterkin?

(Passing Exhibit to the witness.)

A. On the exhibit designated as No. 5-A the table salt items appear on the first tabulated page as Morton's Free Running, Morton's Iodized Salt; opposite the heading Square Cartons; opposite the heading Morton's Table Salt; and as Star Kosher.

Q. And all other items appearing in that exhibit are not regarded as table salt items, is that right?

A. That is correct.

Q. Now, referring to Commission's Exhibit No. 149, will you state whether or not there are any table salt items indicated appearing in that exhibit?

(Passing exhibit to the witness.)

A. No there are not.

Q. So that no reference is made in that exhibit to table salt items, is that correct?

A. That is correct.

Q. Now, referring to Commission's Exhibit No. 150, will you identify the table salt items on that exhibit?

A. The table salt items on Exhibit No. 150 appear oppo-

site the heading Perfection or Star Table Salt; as
2325 Morton's Free Running and Morton's Iodized Salt; as
Morton's Cooking Salt; as R. S. V. P. or Rock Crystal and as Star Kosher.

Mr. Haslett: What exhibit is that?

Mr. McBride: No. 150.

By Mr. McBride:

Q. Then all other items appearing on Commission's Exhibit No. 150 are not regarded as Table Salt items?

A. That is correct.

Q. Now, referring to Commission's Exhibit No. 151, will you identify the table salt items in that exhibit, please?

(Passing exhibit to the witness.)

A. In Exhibit No. 151 the table salt items appearing on the first tabulated page are opposite the heading Star or Triangle Table Salt; as Morton's Free Running and Morton's Iodized Salt; as Rock Crystal or Triangle and as Star Kosher.

Q. And all other items appearing on that exhibit are not regarded as table salt items?

A. That is correct.

Q. Now, referring to Commission's Exhibit No. 152, will you please identify the table salt items on that exhibit?

(Passing exhibit to the witness.)

A. In Exhibit No. 152 the table salt items appearing on the first tabulated page are shown opposite the heading Star or Triangle Table Salt; Morton's Free Running and
Morton's Iodized Salt; as Rock Crystal or Triangle
2326 and as Star Kosher Salt.

Q. All other items appearing on that exhibit are not regarded as table salt items, is that correct.

A. That is correct.

Q. Referring to Commission's Exhibit No. 153, will you please identify the table salt items on that exhibit?

(Passing exhibit to the witness.)

A. On Exhibit No. 153 the table salt items appearing on the first tabulated page are shown opposite the heading Triangle or Star Table Salt; as Morton's Free Running and Morton's Iodized Salt; as Rock Crystal or Triangle and as Star Kosher Salt.

Q. And all other items appearing on that exhibit are not regarded as table salt, is that correct?

A. That is correct.

Q. Referring to Commission's Exhibit No. 154 will you please identify the table salt items on that exhibit?

(Passing exhibit to the witness.)

A. The table salt items appearing on the first tabulated page are opposite the heading Alamo or Perfection Table Salt; as Morton's Free Running and Morton's Iodized Salt; as Morton's Cooking Salt and as Rock Crystal Table Salt.

Q. And all other items appearing on that exhibit are not regarded as table salt, is that correct?

A. That is correct.

2327 Q. Then in determining whether or not a customer has qualified as a $50,000 discount customer, the only salt included in that computation are the table salt items to which you have testified, is that right?

A. That is correct.

Q. And no other salt items are included in making that computation?

A. No, they are not.

Q. Likewise with respect to the payment of any of the quantity discounts, the quantity discounts are confined according to their applicability to the table salt items only to which you have testified, is that right?

A. That is correct.

Q. In making the classification between table salt items and other types of salt, is that a classification made by the Morton Salt Company?

Trial Examiner Purcell: Let me have that question again, please.

(The question above referred to was read by the Reporter.)

The Witness: Yes, it is.

By Mr. McBride:

Q. Then in identifying the items on the various Commission's Exhibits to which you have just testified, and in determining some to be table salt and others not to be

2328 table salt items, the determination is the classification of the Morton Salt Company and not necessarily the use to which that salt might be put by various customers of Morton Salt Company?

A. That is correct.

Q. Then so far as the Morton Salt Company is concerned, the quantity discount payable on purchases of

table salt are payable on the basis of purchases from the Morton Salt Company and not upon the type of customer or the use to which the salt is to be put by the customer?

A. That is correct.

Q. Do you regard table salt items as being the type of item which will compete with other types of salt which are not identified as table salt items?

Mr. Haslett: Will you read that question, please?

(The question above referred to was read by the Reporter.)

The Witness: No, we do not.

By Mr. McBride:

Q. In other words, from your experience in the salt business you would not regard the various table salt items as being competitive in the open market with various non-table salt items, is that right?

A. That is right.

Q. Are you familiar, Mr. Peterkin with the dis-
2329 counts which are paid to the National Tea Company in Chicago, Illinois, referring now to quantity discounts?

A. Yes.

Q. Can you state what discounts are paid to that Company?

A. The discounts paid to the National Tea Company are the carload discount, the unit discount or approximately 5 per cent of the net works basis on table salt grades as applying to a $50,000 purchaser of table salt in any twelve months period; and the 15 cent discount on Morton's Free Running and Iodized purchased by them.

Q. With respect to the unit discount paid to the National Tea Company by reason of this being classified as a $50,000 table salt purchaser, do you know whether or not the National Tea Company purchases $50,000 or more of table salt in any twelve consecutive months period?

A. Yes, they purchase in excess of $50,000.

Q. So that so far as the records of the Morton Salt Company are concerned, the National Tea Company in Chicago qualifies as a $50,000 discount customer, is that correct?

A. That is correct.

Mr. Haslett: Off the record?

Trial Examiner Purcell: Off the record.
(Discussion off the record.)
Trial Examiner Purcell: On the record.

By Mr. McBride:

2330 Q. In referring to the $50,000 or more purchases of the National Tea Company, did you refer to the purchases from the Morton Salt Company alone?

A. Yes, I did.

Q. Do you know whether or not, from the records of the Morton Salt Company, it appears that the National Tea Company purchases 50,000 cases or more in any twelve consecutive months period of the blue package from the Morton Salt Company?

A. No, they do not.

Q. Do you know whether the National Tea Company purchases from the Morton Salt Company in any consecutive twelve months period, 5,000 or more cases of the blue package from the Morton Salt Company?

A. The National Tea Company purchases in excess of 5,000 cases.

Q. But they do not purchase 50,000 cases?

A. No, they do not.

Q. Referring in each case now to a twelve consecutive months period?

A. That is correct, and to Morton's Free Running.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

2331 By Mr. McBride:

Q. Can you state, Mr. Peterkin, the reason why the National Tea Company in Chicago receives a 15 cents per case discount on the blue package rather than a 10 cents per case discount on the blue package, in the light of your previous testimony?

A. Yes. The Morton Salt Company elected to allow the National Tea Company an additional 5 cents per case over and above the discount to which they were qualified, not as a discount, but as a competitive reduction in the price.

Q. And that additional 5 cents is being paid currently to the National Tea Company, is that correct?

A. Yes, it is.

Q. Does the Morton Salt Company reserve the right to withdraw that additional 5 cents at any time it sees fit?

A. Yes, sir.

Trial Examiner Purcell: We will take a five minutes recess.

(A short recess was taken.)

Trial Examiner Purcell: You may proceed.

By Mr. McBride:

Q. Mr. Peterkin, I show you Commission's Exhibit No. 41, and under the second sub-heading of that exhibit you will observe the statement "Purchasers Receiving a Unit Discount in addition to the carload discount." The
2332 first customer appearing under that sub-heading is Creasey Corporation. Will you state if you know, whether or not Creasey Corporation has purchased $50,000 or more of table salt within a twelve consecutive months period?

A. Yes, they have.

Q. So that so far as the records and tabulations of the Morton Salt Company are concerned, the Creasey Corporation qualifies as a $50,000 discount customer, is that correct?

A. That is correct.

Q. Now referring to the next customer under that sub-heading, the Frankfort Grocery Company. Will you state whether or not the Frankfort Grocery Company purchases $50,000 or more of table salt from the Morton Salt Company in any twelve consecutive months period?

A. No, they do not.

Q. In other words, the Frankfort Grocery Company receives a unit in addition to the carload discount but does not purchase in any twelve consecutive months period $50,000 or more of table salt from the Morton Salt Company?

A. That is correct.

Q. Now, the same question with respect to C. D. Kenny Company.

A. C. D. Kenny does purchase in excess of $50,000 worth of table salt.

Q. From the Morton Salt Company?

2333 A. From the Morton Salt Company.

Q. And in any twelve consecutive months period?

A. That is correct.

Q. Now, with respect to the next customer, Kroger Grocery Company, the same question.

A. The Kroger Grocery Company also purchases in excess of $50,000 in any twelve consecutive months period from the Morton Salt Company.

2334 Q. And the same question with respect to National Retailer Owned Grocers?

A. That is correct, the National Retailer Owned Grocers do purchase $50,000 or more in a twelve consecutive month period from the Morton Salt Company.

Q. And the same question with respect to Thomas & Howard?

A. Thomas & Howard do not purchase.

Q. Do they purchase $50,000 from Morton Salt Company in any twelve consecutive month period?

A. No, they do not.

Q. And the same question with respect to the last on the list, Wholesale Grocers Sales Company of Philadelphia, Inc.?

A. The Wholesale Grocers Sales Company of Philadelphia, Inc. does not purchase $50,000 or more from the Morton Salt Company in any twelve consecutive month period.

Q. Will you state then, Mr. Peterkin, the occasion for paying the additional unit to the Frankfort Grocery Company, Thomas & Howard Company, and Wholesale Grocers Sales Company of Philadelphia, Inc.?

A. Morton Salt Company elected to adjust their prices to those three accounts by reason of a competitive condition.

Q. And the unit is paid then as a competitive adjustment so far as Morton Salt Company is concerned, and not as a quantity discount, is that correct?

A. That is correct.

2335 Q. Can you describe, Mr. Peterkin, the type of advertising work that is done by the Morton Salt Company?

A. In general the type of advertising work done by the Morton Salt Company is the national advertising conducted in magazines and billboards throughout the country; occasionally in newspapers as a national program. Morton Salt Company also advertises through the media of specialty work, floor displays, counter displays, window streamers, posters, various other pieces of display mate-

rial which are used by the Morton Salt Company representatives in the course of their promotional activities.

Q. You refer in your answer to specialty work; is that work done in retail stores?

A. Yes.

Q. And that is a part of the promotional or advertising program of the Morton Salt Company?

A. That is correct.

Q. For the purpose of increasing its salt sales?

A. That is correct.

Q. Is the specialty work offered or done for all retailers handling Morton Salt Company's products?

Mr. Haslett: Mr. McBride, did you say is it done for the retailer?

Mr. McBride: Is it offered to or done for. We had better have the question read back.

2336 (The question referred to was read by the reporter as recorded.)

The Witness: No, it is not.

By Mr. McBride:

Q. Is it offered to The Great Atlantic & Pacific Tea Company?

A. No, it is not.

Q. Is it offered to or done for Safeway Stores?

A. No.

Q. Is it offered to or done for the American Stores?

A. No, it is not.

Q. Is it offered to or done for Kroger Grocery & Baking Company?

A. No.

Q. In other words, with respect to that group of customers the Morton Salt Company does not offer its specialty work which you have just described, is that correct?

A. That is correct.

Q. Now, with respect to all other retailers handling Morton Salt Company's products does the Morton Salt Company offer this specialty advertising or promotional work?

A. Yes, it does.

Q. Will you state, Mr. Peterkin, why the specialty promotional or advertising work which you have described is not offered to the four companies just referred to in your testimony?

2337 A. Those companies are organized in such a way that they have their own facilities for promotional work along their own lines, and the Morton Salt Company does not offer to superimpose its promotional work on those organizations.

Q. But with respect to all other retailers the offer is made and the work done by the Morton Salt Company?

A. That is correct.

Q. The four companies which you have named all purchase 50,000 cases or more in any twelve consecutive month period of the blue package, is that correct?

A. That is correct.

Q. Is the specialty promotional or advertising work to which you have just testified offered to or done for the National Retailer Owned Grocers?

A. Yes, it is.

Q. Does that company purchase 50,000 cases or more in a twelve consecutive month period of the Morton's blue package?

A. Yes, they do.

Q. What discount does the National Retailer Owned Grocers receive on its blue package purchases from the Morton Salt Company, if you know?

A. They receive a discount of 10 cents per case.

Q. The other four companies referred to with respect to whom no specialty work is done, being the Great At-
lantic & Pacific Tea Company, Safeway Stores, Am-
2338 erican Stores, and Kroger Grocery & Baking Company receive what discount on their purchases of blue cans?

A. Those customers receive a discount of 15 cents per case.

Q. Mr. Peterkin, is the specialty work to which you have testified offered to and done for retail customers of the Morton Salt Company purchasing 5,000 cases or more of blue package in any twelve consecutive month period?

A. Yes, it is, with the exception of those already mentioned.

Q. Excluding then the four with respect to whom you have testified?

A. That is correct.

Q. To which the offer is not made?

A. That is correct.

Q. Is specialty work of the type to which you have testified done for wholesalers?

A. No, it is not.

Q. Will you state the reason for that?

A. Specialty work is so designed to promote the sale and distribution of the Morton table salt products, the Morton free running and iodized to the consuming public, and is not designed to directly promote the sale of those products through the wholesale grocery.

Q. Is it the policy of the Morton Salt Company to do this specialty sales work for all retailers handling
2339 the Morton Salt Company products, table salt products?

A. Yes, it is, with the exception of those already mentioned.

Q. Who determines what specialty work is to be done and for whom it is to be done in so far as the retailers are concerned to whom that offer is made?

A. The Morton Salt Company's executive offices in Chicago.

Q. And that determination is made on what basis?

A. Well, I am afraid I have lost you again, would you repeat the question?

Trial Examiner Purcell: Read the question, please.

(The question referred to was read by the reporter as recorded.)

By Mr. McBride:

Q. In other words, is it made on the basis of the Morton Salt Company's own sales policy or on some other basis?

A. The determination is made upon the basis of the Morton Salt Company's sales policy.

Q. As to where its promotional needs are requiring specialty work in question, is that correct?

A. That is correct.

Q. I believe you testified, Mr. Peterkin, in your testimony as a witness on behalf of the Commission that the Morton Salt Company will permit stop-overs of shipments of salt, is that correct?

A. Yes.

2340 Q. Will you describe what you mean by stop-overs?

A. The term "stop-over" in its meaning used here ap-

plies to the privilege of stopping a carload shipment in transit for partial unloading, and the continuation of the movement of the car to its destination for final unloading.

Q. Is that privilege available to all customers of Morton Salt Company?

A. It is available to all customers of the Morton Salt Company whose place of business is located within the territory where the tariffs provide that privilege.

Q. Referring now to the tariffs, whose tariffs do you mean?

A. The Interstate Commerce Commission.

Q. In other words, in so far as the tariffs of the Interstate Commerce Commission permit, the Morton Salt Company makes that stop-over privilege available to customers?

A. That is correct.

Q. What costs are involved with respect to stop-over shipments?

A. There is a charge made in accordance with the tariff provisions for the privilege of stopping a car in transit. I am not just familiar with the amount of money involved.

Q. Those tariff provisions are again provisions of the Interstate Commerce Commission, is that correct?

A. That is correct.

2341 Q. In permitting stop-overs is the cost paid by the Morton Salt Company or by the customer?

A. No, the cost is paid by the customer.

Q. As an additional freight charge?

A. As an additional freight charge.

Q. And that is true with respect to all customers making use of that privilege?

A. That is correct.

Q. I think you also testified, Mr. Peterkin, as a witness on behalf of the Commission that on some rare occasions salt was shipped from one of the Morton Salt Company's plants to another of its plants and then reshipped from the second plant to the customer, is that correct?

A. Yes.

Q. Will you state the reasons on which those rare occasions might occur?

A. Those reasons are entirely reasons of the Morton Salt Company in providing a balance of production between plants, or supplying one plant with an item not generally

produced there, or for various possible reasons, all being those of the Morton Salt Company's manufacturing department.

Q. Are any transshipments of that type ever done for the special benefit of any customer or group of customers?

A. No.

Q. Then with respect to any items that might be shipped from one plant to another on the occasions which you
2342 have described, how are the prices quoted to the customer on those occasions, the price at the second plant or the price at the first plant?

A. The price quoted is that applying to the plant from which the shipment of the products move directly to the customer.

Q. And how is the freight computed in those instances?

A. The freight is computed in the same manner, being the net freight applying from the point of origin to the destination of the actual shipment between our plant and the customer.

Mr. Haslett: May we go off the record just a minute?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. Then with respect to the freight from the first plant to the second plant, is that cost absorbed by the Morton Salt Company or charged to the customer?

A. That cost is absorbed by the Morton Salt Company.

Q. As one of its manufacturing or handling costs?

A. That is correct.

Mr. McBride: You may cross-examine.

2344 Trial Examiner Purcell: On the record.

Although Mr. Peterkin, who is now on the stand, was surrendered for cross-examination, counsel for Respondent desires to resume the direct examination for the purpose of correcting certain statements in the record. You may proceed.

DANIEL PETERKIN, JR., a witness called for the Respondent and, having been previously duly sworn, resumed the stand and testified as follows:

Direct Examination (Continued) by Mr. McBride.

Q. Mr. Peterkin, in your testimony this morning, in the course of identifying table salt items in the various salt price scales in evidence, you identified Kosher Salt as a table salt item, is that correct?

A. That is correct.

Q. Do you wish now to correct your testimony in that regard?

A. Yes, I do. On investigation, I find that the
2345 package we term Kosher Salt, although used for the purposes of seasoning food, is not considered by us in the computation of our discounts as a table salt item.

Q. So that Kosher Salt, then, would fall into the class of salt items other than table salt items, so far as your testimony this morning was concerned?

A. That is correct.

Mr. McBride: You may cross-examine.

Cross-Examination by Mr. Haslett.

Q. Mr. Peterkin, this morning in your direct examination, you referred to a carload unit. Will you please explain what you mean by a carload unit?

A. The term, as I used it this morning, refers to the carload shipment as defined under the provisions of the tariff act covering salt, and a carload unit under that definition is the movement of salt in a car with a minimum weight of 45,000 pounds for package salt, or 80,000 pounds for salt moving as bulk.

Q. So that the carload unit, then, would be a full carload of tabel salt up to 45,000 pounds?

A. That is right.

Q. And other grades of salt up to 80,000 pounds?

A. No, on other grades of salt in packages, with a minimum weight of 45,000.

2346 Q. How about in bulk?

A. In bulk, the minimum weight is set by the tariff as 80,000 pounds.

Q. Have you any customers that receive a ten cent per case allowance from your company on so-called quantity basis, that purchase in less than carload lots?

A. Presumably, yes.

Mr. McBride: May I have that question read back again, please?

(The question above referred to was read by the Reporter.)

Mr. Haslett: Have you any objection to that question, Mr. McBride?

Mr. McBride: No.

The Witness: Presumably, yes. The mode of transportation, or shipment of the product has no bearing on the quantity discount, providing the customer purchases the stipulated quantity entitling him to the discount.

By Mr. Haslett:

Q. If a customer was purchasing round package salt on less than carload basis and was receiving a 10 cent per case allowance, it would put him on the same footing as those customers that were purchasing on a carload basis? They would both get the same price, wouldn't they?

A. Yes.

2347 Q. I am talking about the table salt.

A. You are talking about the Morton blue package?

Q. Yes.

A. Yes.

Q. It would be $1.50 for both customers?

A. Correct.

Q. Now, we talked this morning a few moments about the various scales that Morton Salt Company publishes and disseminates to its various salesmen. Are those scales made available to customers in addition to Morton salesmen?

A. Yes, they are available.

Q. What do you mean? Are they sent out, or are they just available?

A. They are available, and would be sent out on request.

Q. I see. You spoke this morning about the various discounts that your Company allows to its customers that qualify for such discounts as increasing the volume of your business. Will you explain how that is done, sir?

A. I don't recall making the statement that it actually

increased the volume of the business. We hope that it will, and it probably has. But to what extent, I wouldn't be prepared to say.

Q. What is the real purpose of the discount?

A. The real purpose of the discount is just that, to increase the use and distribution of our product.

2348 Q. You feel by giving some customers a lower price that they will purchase more salt?

A. We hope that they will.

Q. Mr. Peterkin, this morning Mr. McBride, your counsel, showed you various exhibits, beginning with Exhibit No. 1, which were the scales in the Commission's case, that is, Commission's Exhibit 1, Commission's Exhibit 3-A, 4-A, and 5-A, and so forth, and you then stated what grades of salt were table salts, and the rest of them were not table salts. Does your company allow any discounts on salt that is not in the classification of table salt?

A. Yes, we do.

2349 Q. I see. And what discounts are they, sir?

A. That is what we term the carload discount.

Q. Do you grant any quantity discounts on grades of salt that are not included in the table classification?

A. You mean in addition to the quantity discount we term as carload?

Q. That is right, sir.

A. No.

Q. That is the only discount?

A. That is correct.

Q. If they purchase a full carload of salt in bulk, that is, in sacks, they would get the regular carload price on it?

A. That is correct.

Q. Which price would reflect the discount?

A. That is right.

Q. And that would be the only discount that would be allowable on that particular grade of salt?

A. That is correct.

Q. Isn't it a fact that the use by the various customers of the various grades of salt manufactured or processed by your company determines the classification that your company puts that grade of salt in?

A. No, it does not.

Q. Who determines the classification of the particular grades of salt?

2350 A. The Morton Salt Company's executive staff.

Q. And the use would have nothing to do with the classification?

A. No.

Q. It would not?

A. I am not sure I understand that last question.

Q. Let me give you an example.

If you sold salt to the farmer for curing of meat, and he used it also in connection with his household duties, and with other duties around the farm, would that use have anything to do with the classification in which that salt was placed? Would that be classified as table salt, commercial salt, or bulk salt, or what?

A. In the example you give, if the product purchased by the farmer were a 100 pound bag of Anchor granulated, that grade of salt is determined by us to be a commercial grade of salt other than table salt. To what use the farmer may put it makes no difference at all to our classification; and, conversely, the farmer may purchase a Morton blue package, and use that to freeze ice cream, and it still would make no difference in our classification. That would be considered table salt.

Q. Could the Anchor salt be used for table purposes?

A. Oh, yes.

Q. Is it of a different grade and quality than the

2351 blue package salt?

A. Yes, it is.

Q. What type of salt do you consider competitive with the table salt?

A. Other types of table salt?

Q. Other types of table salt?

Trial Examiner Purcell: By that do you refer to the blue package, Mr. Haslett?

Mr. Haslett: No, I am talking about the other grades of salt.

Trial Examiner Purcell: I am speaking of being competitive with the blue package.

Mr. Haslett: I will bring that out right now, sir.

Trial Examiner Purcell: All right.

By Mr. Haslett:

Q. The other types of table salt, that is, the other five cent salt of other processors of salt?

A. That is right.

Q. Now, what types of salt do you consider competitive with the Morton's blue can free running and iodized?

A. In a sense, all table salt is competitive with it.

Q. Do you know of any other competitor that processes and offers for sale salt of the same grade and quality as the blue can salt?

A. No, I do not. Many profess to.

2352 Q. I believe you testified on your direct examination back in April, I think, when you were a witness for the Commission, that you didn't consider that there was any competition with the blue can salt, that there was no competitor that manufactured a product that was comparable with your blue can salt.

A. We consider the blue package salt the more highly refined, and better grade of salt than anything on the market. To that extent, there are no competitors, to our knowledge.

Q. There are no competitors that process a grade of salt and sell it in the same price bracket as the Morton round package blue can salt, is that true, sir?

A. There are none that I know of.

Q. There is usually quite a differential between your round package blue can salt, and the next highest price salt, isn't there?

A. The differential is variable.

Q. You say it is variable?

A. It is variable.

Q. And to a large degree, there is quite a variation, is there, sir?

A. In some instances, a very substantial one.

Q. What would be, if you can recall, the closest price competitor to the blue can salt?

A. Speaking in dollars and cents?

2353 Q. That is right, sir.

A. I believe there are two, or perhaps three companies that process a table salt put up in a round can whose price is $1.35, as compared with our carload price of $1.50.

Q. So it would be a 15 cent differential in price?

A. That would be the minimum.

Q. That would be the minimum. And the maximum might run as high as a quarter, or 30 cents?

A. The maximum might and does run as high as 70 to 80 cents.

Q. Would you give me the names of the competitors, and I use that word advisedly, that manufacture or process and sell a grade of salt for $1.35, those three competitors that you have just referred to?

A. One that I believe has a price at that level is the Diamond Crystal Salt Company; another is the Leslie Salt Company; and I believe the International Salt Company.

Q. Would that be the Sterling Salt?

A. That would be the Sterling Salt, yes.

Q. Mr. Peterkin, I believe you testified in your direct examination this morning that the National Tea Company gets all of the discounts that your company grants and allows on so-called quantity basis, that is, 15 cents allowance on the blue can salt, and an additional unit discount over and above the carload discount on the other
2354 grades of table salt, is that correct, sir?

A. No, that is not correct.

Q. Well, would you correct me to tell me just what you did testify to?

A. The National Tea Company, as I recall the testimony this morning, it developed that the National Tea Company received a 10 cent per case discount, and a 5 cent competitive adjusted price, not a 15 cent quantity discount.

Q. I see. And do they purchase over 5,000 cases of Morton's free running salt a year?

A. Yes, they do.

Q. And do they purchase $50,000 worth of other grades of salt per year?

A. Yes, including their purchase of the Morton free running and iodized, they do.

2355 Q. And do they purchase that from your Company?

A. Yes, they do.

Q. All of that from your Company?

A. Well, they purchase from our Company table salt in the amount of $50,000, or more, in any twelve consecutive months period.

Q. I see. Do they purchase 50,000 cases of blue can salt?

A. No, they do not, from our Company.

Q. You say they do not get the 15 cent allowance?

A. They get a 10 cent quantity discount, which applies to their purchase of 5,000 or more cases per twelve consecutive months period, and in addition to that, as we

developed this morning, they receive an additional five cents competitive allowance applying to the blue package.

Q. Applying to the blue package?

A. That is correct.

Q. That was what confused me in my questions to you this afternoon.

The 5 cent allowance does not apply to the other grades of salt, but is confined to the blue package?

A. That is correct.

Q. So, in truth and in fact, they are getting 15 cents allowance on the blue package in all, is that correct, sir?

A. They are getting two allowances.

Q. 10 and 5.

A. They are getting a quantity discount of 10
2356 cents, and a competitive adjustment of five cents.

Q. But on each case of the blue package salt, they are getting a 15 cent allowance?

A. In total, the amount of adjustment is 15 cents.

Q. That is right. Have you any other customers that are in the same classification as the National Tea Company?

A. No, not exactly. We have competitive conditions which warrant an adjustment, and I believe the only other one I can recall is the Consolidated Grocery Company.

Q. You mean Consolidated Companies, Inc., of Plaquemine, Louisiana?

A. Consolidated Companies, Inc., yes.

Q. They get a 7½ cent per case allowance?

A. Yes.

Q. And that is the only customer that you can think of that gets any special allowance from your Company?

A. Yes, that is the only other one that I know of offhand.

Q. And do you know what Thomas & Howard of Columbia, South Carolina, get from your Company?

A. You are speaking now of what discount they receive from us?

Q. What discount, yes, sir.

A. Thomas & Howard Company get a discount of 10 cents per case on the Norton blue package.

2357 Q. Yes.

A. And they get a competitive adjustment of one unit, or approximately 5 cents of the net works basis on other grades of table salt.

Q. And do they purchase $50,000 worth of table salt

from your Company during a twelve consecutive months period?

A. No, they do not.

Q. But whatever they do purchase, they get the additional unit of discount, which amounts to approximately 5 cents?

A. On table grades.

Q. And when your Company grants an allowance of 10 cents a case to any particular customer, due to the fact that that customer has purchased 5,000 cases of the blue can salt during a twelve consecutive months period, it doesn't require that each individual unit or branch of that particular customer purchase that particular amount, does it, sir?

A. Oh, no.

Q. It is just the combined purchases of the Company, of all branches?

A. Yes.

Q. And that is true as to the A. & P., and Kroger?

A. That would be true in any case where we were selling a company with multiple branch outlets.

Q. I see. Mr. McBride questioned you quite at length this morning in regard to specialty work done in con-
2358 nection with the resale of your product through retailers, to the consumer public, and you stated there that this specialty work is available to all retail customers. Is that true, sir?

A. No, not exactly. I stated, as I recall it, that it was available to all retail customers of ours, with certain exceptions.

Q. And what were those exceptions?

A. Those exceptions were customers whose business is retailing food products, including salt, but whose organization is such that they provide their own promotional departments.

Q. And I think you named A. & P., Safeway, American, and Kroger Grocery & Baking Company?

A. That is correct.

Q. Now, not including those four customers that I have just named, is the specialty work available to all retail customers who handle Morton's round package salt?

A. Yes.

Q. And is this specialty work confined entirely to the blue can salt?

A. Principally so, but not entirely.
Q. Not entirely?
A. No.
Q. Do you use it in connection with the retail of
2359 other grades or types of salt?
A. On occasions.
Q. But is it confined to table salt?
A. It is confined to table salt, and primarily to the sale of the Morton blue package.
Q. Is that specialty work in addition to the floor display advertising allowances, or merchandising plans that were in effect in several of the eastern cities, about which testimony is in the record on the Commission's case?
A. The two types of merchandising plans are entirely separate.
Q. They are, sir?
A. Yes.
Q. One is national, and the other is confined to a particular zone, the limits of which are set by the Morton Salt Company?
A. Yes.
Q. Now, does the Morton Salt Company pay its retailer customers any monetary consideration for the specialty work done through their outlets?
A. May I have that question again?
Trial Examiner Purcell: Read the question.
(The question above referred to was read by the Reporter.)
The Witness: I am a little confused by the word-
2360 ing of that question. The retail customer does not do the specialty work.

By Mr. Haslett:
Q. Who does the specialty work?
A. Morton Salt Company representatives.
Q. And it is done in their stores, in the retailer's stores?
A. An attempt is made to do it in their stores.
Q. Well, where you do succeed in that attempt, do you pay the retailer any money for the use of his store, for the use of his counter or window in putting up the display advertising?
A. Never for work done by the Morton Salt Company representatives.
Q. The only time that you pay is when it is in connec-

tion with the Respondent's Exhibits 1, 2, 3, and 4-A, that is, the Morton's floor display merchandising plan, is that correct, sir?

A. That is correct.

Q. And that plan has only been in effect in several of the eastern States?

A. Yes.

Q. And that plan, when money is paid to various retailer customers, is not in any way connected with the specialty work done by the Morton Salt Company through retail outlets?

2361 A. No, they are entirely separate.

Q. Has the Morton Salt Company offered to do the specialty work that we have referred to here for A. & P., Safeway and American Stores, Inc., and Kroger Grocery & Baking Company? Has it offered to do that work for those particular customers?

A. Those four that you just named, no.

2362 Q. They have never made the offer to them?

A. No.

Q. Have they ever requested of your company to furnish service to them, that you know of, sir? Have they ever requested that your company furnish the specialty work service to them?

A. Not to my knowledge.

Q. Would you be in a position to know if they had made such a request?

A. I would.

Q. And to the best of your knowledge, you know of no request coming through for that particular service?

A. No.

Q. From those customers?

A. No.

Q. I believe you testified on the Commission's direct case that your company makes an allowance of 10 cents per case to the National Retailer Owned Grocers, or N. R. O. G., which Mr. Miller is the president of. Does your company make available to the various units of N. R. O. G. the specialty work?

A. Yes.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

2363 Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. The purchases of N. R. O. G. from the Morton Salt Company emanate from the main office of the organization here in Chicago, is that true, sir?

A. Well, their main office, I believe it is located here in Chicago.

Q. Do you receive any orders from any single unit of N. R. O. G.?

A. I am not sure that I understand the question. You mean exclusive, or outside the purchase orders submitted to us the N. R. O. G.?

Q. Yes, do you receive any orders direct from any single unit of N. R. O. G., say, one man at Atlanta, Georgia, would he order direct from the Morton Salt Company for salt to be shipped to their single warehouse in Atlanta, Georgia?

A. That has never occurred, if I understand your question. That has never occurred, to my knowledge. They requisition their salt on commission directly to our local offices, or main offices, and the confirmation of their requisition comes through the N. R. O. G. purchasing office located here in Chicago.

Q. The 10 cent per case allowance granted by your company to N. R. O. G. is granted on the combined purchaser of all N. R. O. G. members, isn't that correct, sir?

2364 A. It is granted on the purchases of the N. R. O. G. from us.

Q. I was wondering if you could just broaden that answer a little bit. It is not quite responsive to my question. Is it granted on the combined purchases of all N. R. O. G. members?

A. I don't feel qualified to answer that, because I do not know what the N. R. O. G. does with their orders.

Q. Do you know of any single member of N. R. O. G. that would purchase in the amount that would make him eligible for the 10 cent per case allowance?

A. I am not familiar with the quantities purchased by the various members of the N. R. O. G.

Q. Do your salesmen in the field call upon the various members of N. R. O. G.?

A. Yes.

Q. And solicit business from each member?

A. Yes.

Q. And what happens to the order after they obtain an order, if they do?

A. The orders obtained by our salesmen from the members of the N. R. O. G. are submitted to our local sales office, or our Chicago office, as the case may be, and from there follow the same routine as any other order might, subject, of course, to confirmation by the N. R. O. G.
2365 purchasing office.

Q. Do you keep a copy of the invoice sent to the main office of N. R. O. G.?

A. The invoice is sent to the main office, yes, sir.

Q. Do you also send an invoice to the purchaser who has purchased his requirements of salt through your salesmen?

A. Yes, I believe we do.

Q. You spoke this morning, Mr. Peterkin, about the stopovers, and I think we have gone into it quite extensively in the Commission's direct case, but there is one question I would like to ask, whether or not the carload price, that is, the discount, the socalled carload discount applies on the stop-over orders?

A. Yes, the carload goes from our plant as a carload unit, and the carload discount applies to the full car.

Q. In order that the record may be clear about this particular thing, I would like for you to state who would pay the freight from the first point, or the first stop, to the second stop of the car. Like, the car would stop here in Chicago, and would dispose of half of its contents here, and then go on to Evanston. Who would pay the freight from Chicago to Evanston?

A. On items which carry a freight charge, that is, all items other than the flat delivered price items, the customer at Chicago, in your illustration, would pay the freight
2366 on his portion of the shipment, and the customer in Evanston would pay the freight on his portion.

Q. I see. But the customer in Chicago would pay his portion of the freight to Chicago, from the plant to Chicago, is that correct, sir?

A. Whatever that freight may be.

Q. Yes, sir. And the customer in Evanston would pay the freight from the plant to Evanston, on his portion?

A. The stop-off privilege is granted in certain territories under the tariff regulations.

Trial Examiner Purcell: Mr. Peterkin, will you answer Mr. Haslett's question, if you can?

Read the question, Miss Reporter.

(The question referred to was read by the reporter as recorded.)

Trial Examiner Purcell: Read the original question of Mr. Haslett about the example. Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Go ahead, Mr. Peterkin.

Mr. Haslett: I will reword the question. Mr. Examiner, in order that the question will not be confusing to the witness, I would like to reframe the question at this time, with the permission of Mr. McBride.

Trial Examiner Purcell: That is agreeable to you,
2367 Mr. McBride?

Mr. McBride: No objection.

Trial Examiner Purcell: It is so ordered.

By Mr. Haslett:

Q. Mr. Peterkin, let us assume that you have two customers. One is located in Chicago, and the other in Evanston, Illinois.

They both purchase a half a car of salt apiece, and the car comes from your plant in Michigan. There is the stop-over privilege granted on this particular car. The car arrives in Chicago, and the customer takes out his half of the salt, the Chicago customer, and then it goes on to Evanston, from Chicago to Evanston.

Now, who pays the freight on the half of a car of salt from Chicago to Evanston?

A. I am sorry. I can't answer that. I don't know.

Q. Well, someone would certainly pay the freight
2368 on that half a car of salt that goes from Chicago to Evanston?

A. There is no individual charge of freight from Chicago to Evanston on a half car of salt moving as a remainder portion of the stop off car.

Q. You say there is no individual charge, is that what you said?

A. There is no individual charge for the freight from Chicago to Evanston, in your example, for that portion of the remainder part of the car that moves to the destination point.

Q. Then there is a charge for that salt from the plant to Evanston?

A. That is correct.

Q. And who pays the freight from the plant to Evanston?

A. The customer located in Evanston.

Q. Does he pay the freight, does he pay the freight on the half a car?

A. He pays the freight on that portion of the car which he has purchased.

Q. And the customer in Chicago pays the freight on that portion of the car from the plant to Chicago?

A. That is correct.

Mr. Haslett: I think that answers my question.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

2369 Trial Examiner Purcell: On the record.

By Mr. Haslett:

Q. Mr. Peterkin, getting back for just a few moments to the specialty work done in connection with the resale of Morton's round package and other table salt, is there any quantity qualification on purchases required by the Morton Salt Company in order to be eligible for the specialty work?

A. None at all.

Q. None at all. So any retail customer of Morton Salt Company, or any retail customer through any wholesale customer that handles your product, is eligible for the specialty work?

A. Yes, with the exception of those four you have mentioned, that is correct.

Q. With the exception of the A. & P., Safeway, American Stores, and Kroger?

A. Yes, sir.

Q. Why is it that the Morton Salt Company hasn't advised these four customers, A. & P., Safeway, American, and Kroger that they have this specialty work available, and would like to do some advertising through their retail outlets?

A. The Morton Salt Company may or may not have advised them that that specialty work is available to other customers who do not have the same organization, but in the opinion of the Morton Salt Company, the organ-

2370 ization of those four concerns is such that any work that we might do in the nature of specialty, or on the point of sales promotional work, would be superfluous

and unnecessary by virtue of the fact that they are already doing their own work through their own channels.

Q. And you feel that any work you would do would be just a duplication of their own work?

A. That is correct.

Mr. Haslett: Mr. Examiner, that concludes the cross examination of this witness at this time, but I would like to reserve further cross-examination of this witness.

Trial Examiner Purcell: Is that acceptable to you, Mr. McBride?

Mr. McBride: I don't know what the occasion for the reservation would be. It is not that I am unwilling to cooperate with Mr. Haslett, but with the exception of possibly a few questions on redirect, Mr. Peterkin may or may not be on the stand again, so far as I know. I have no idea what his schedule will be, if he is going to be subject to recall for further cross-examination.

Mr. Haslett: What I had in mind, Mr. McBride, is this, that after a perusal of the record made here today, that some questions might come into my mind that I would like to ask him, and if they do, in case there is rebuttal testimony, then I would have a right to cross-examine Mr.
2371 Peterkin as to those particular questions.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Mr. Examiner, I have no objection to Mr. Haslett's reserving the right of further cross-examination with Mr. Peterkin at any time during the course of the hearings here in Chicago, subject to Mr. Peterkin's convenience in regard to other engagements, and adjustable as to that, but I shall not wish this established as a precedent, to reserve cross-examination with respect to other contemplated witnesses on the road where hearings are scheduled within particular limited days.

Mr. Haslett: Mr. Examiner, it is not my purpose to make such a reservation as to witnesses outside of Chicago, but since Mr. Peterkin is president of the Company and is available here in Chicago, I would like to make that reservation, if it is agreeable with counsel.

Trial Examiner Purcell: Very well. It has been consented to. Proceed with your redirect, if any.

Redirect Examination by Mr. McBride.

Q. Mr. Peterkin, you have testified both on direct and cross-examination to the effect that National Tea
2372 Company of Chicago is receiving a quantity discount of 10 cents per case on its blue package purchases by reason of being a 5,000 case purchaser or more, and a competitive adjustment of 5 cents over and above the quantity discount, making an aggregate amount of 15 cents, in terms of dollars and cents. That is correct, is it?

A. That is correct.

Q. Is there any connection between the fact that the aggregate amount in dollars and cents paid the National Tea Company on the basis just stated is 15 cents, and the fact that the Morton Salt Company pays a quantity discount of 15 cents in dollars and cents to 50,000 case purchasers of the blue can?

Mr. Haslett: I object to that, Mr. Examiner. That is a conclusion that must be drawn by the Commission, and not by this witness. If there is any such connection between the two discounts, the Commission will determine what connection exists.

Trial Examiner Purcell: Now, let me have the question.

(The question above referred to was read by the Reporter.)

Mr. McBride: If the Examiner please, I don't see at all any basis for the objection. Mr. Haslett in his cross-examination attempted to show some connection, I
2373 assume, by the nature of his questions, and I take it that the Morton Salt Company and its president can know and testify whether there is any connection between the two.

Whether the connection be a valid one or an invalid one, or the lack of connection be a valid one or an invalid one, that may well be for the Commission to determine.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. The objection is overruled.

The Witness: May I have the question?

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the Reporter.)

The Witness: No, there is not.

2374 By Mr. McBride:

Q. Then in arriving at the amount of competitive adjustment, if any, which the Morton Salt Company desired at any time, or might desire in the future to make to the National Tea Company on its purchases of blue can over and above the quantity discount of 10 cents, the Morton Salt Company could have used 2 cents, 5 cents, or 50 cents, as it chose, depending upon the requirements of the competitive condition, is that correct?

A. That is correct.

Q. Then in this particular case, the Morton Salt Company chose the 5 cents referred to as the amount which, in their judgment, they were willing to pay to accomplish the ends in question, in view of the competitive situation, is that correct?

A. That is correct.

Q. Now, with reference to the Thomas & Howard Company, the Wholesale Grocers Sales Company of Philadelphia, Incorporated, and the Frankford Grocery Company, is there any connection between the competitive adjustment on table salt grades other than the blue can, paid to those companies, and the quantity discount of one unit paid to purchasers qualifying as a $50,000 purchaser of the Morton Salt Company?

A. Yes, there is.

Q. Will you state the connection?

2375 A. In the instance just cited, it was determined that the competitive condition with which we found ourselves confronted, in attempting to sell the Thomas & Howard Company our products, arose from the fact that other producers were supplying the Thomas & Howard Company with salt of a similar grade and quality to ours, at a price which included a quantity discount of the same amount, roughly, as our quantity discount, applying to a $50,000 purchaser, and it was therefore determined we would meet the competitive situation as we found it, in that particular instance.

Q. In each of those instances, referring to the last three named purchasers, does the Morton Salt Company reserve the right at any time to withdraw that competitive adjustment?

A. It reserves that right at all times.

Trial Examiner Purcell: That is the second time you have asked him the same question. You went into that quite thoroughly on direct, Mr. McBride.

Mr. McBride: I have never asked him this with respect to those three companies.

Trial Examiner Purcell: I see.

Mr. McBride: I asked him that with respect to the National Tea, on the other type of adjustment.

Trial Examiner Purcell: I see.

Mr. McBride: I have only one or two more questions.

Trial Examiner Purcell: Go as far as you like, 2376 but avoid repetition as far as possible.

By Mr. McBride:

Q. Would it not be true, Mr. Peterkin, that the Morton Salt Company could have declined to meet the type of competition which you describe, with respect to Thomas & Howard, Wholesale Grocers, and Frankford, or to meet it by half a unit, or exceed it by a unit and a half, had it so chosen?

A. That is correct.

Mr. McBride: That is all.

Trial Examiner Purcell: Recross examination?

Mr. Haslett: I think I will move to strike the last question and answer as being incompetent, irrelevant and immaterial to the issues of this case, and it adds nothing on which the Commission can predicate a finding. The Morton Salt Company might have elected to go out of business instead of meeting it.

Trial Examiner Purcell: Let the argument be off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record. The motion of counsel for the Commission is overruled. Recross examine.

We will have a five minute recess, first.

(A short recess was taken.)

Trial Examiner Purcell: On the record. Any re- 2377 cross?

Mr. Haslett: Yes.

Recross Examination by Mr. Haslett.

Q. Mr. Peterkin, you stated on your redirect examination that the competitive adjustment, so-called, of approximately five per cent granted by your company to National Tea Company, was due to the fact that someone else, or some other processor of salt was granting some sort of

a discount to that company? Do you remember testifying to that effect?

Mr. McBride: I object to that question, Mr. Examiner. It was not stated in accordance with any testimony of Mr. Peterkin's in the record so far, where reference was made, in the first place, to "approximately five per cent". That was not testified to with respect to National Tea Company, nor was there any testimony regarding some competitor granting a similar allowance on similar items to National Tea Company.

Trial Examiner Purcell: There is an objection. I think the objection is well taken. It will be sustained. You may reframe your question.

By Mr. Haslett:

Q. Mr. Peterkin, you did state, and I don't want to misquote your testimony. It is never my intention to misquote in any way, sir, and if I don't quote it correctly,
2378 you just tell me, sir.

You do grant them five cents per case allowance on the blue can salt over and above the ten cent allowance which they usually get on a so-called quantity basis, for a competitive adjustment reason, isn't that correct, sir?

A. We grant them a five cent competitive adjustment over and above the ten cent quantity discount, to which they are entitled.

Q. I see. How did you arrive at that five cents? Is that just an arbitrary figure, sir?

A. That adjustment is an arbitrary figure, yes.

Mr. Haslett: That is all, Mr. Peterkin.

Trial Examiner Purcell: Any further examination?

Mr McBride: No, I have no further direct.

Trial Examiner Purcell: The witness will therefore be excused, subject to the reserved right of counsel for the Commission to further cross-examine the witness at some future time, if he so desires.

(Witness excused.)

Trial Examiner Purcell: Call your next witness.

Mr. McBride: I call as the next witness on behalf of the Respondent, Mr. Arnold J. Coyne.

ARNOLD J. COYNE was thereupon called as a witness for the Respondent and, having been first duly
2379 sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. Coyne, will you state your name and address, please?

A. Arnold J. Coyne, 450 South Princeton Avenue, Villa Park, Illinois.

Q. What is your occupation, Mr. Coyne?

A. I am the general office manager of Morton Salt Company.

Q. How long have you been employed by the Morton Salt Company?

A. Since March, 1920, about 22½ years.

2380 Q. You are now the general office manager of that company?

A. Yes.

Q. And your office is located where?

A. 210 South Michigan Avenue, Chicago.

Q. That is the general office of Morton Salt Company, is that correct?

A. It is.

Q. By general office, I mean its principal headquarters office?

A. Yes.

Q. How long have you been the general office manager of the Morton Salt Company?

A. Since April, 1942.

Q. Prior to that time, what position did you hold in the Company?

A. I was the assistant office manager and department manager in charge of invoicing operations.

Q. As general office manager, will you describe generally what your duties are?

A. Well, my duties are primarily the general supervision of all office detail work, in so far as the various departments are concerned, in the Chicago office.

Q. Can you describe what those various departments are?

A. Well, that would be our clerical staff, our sales department, credit department, tabulating department,

2331 traffic department, invoicing and order department, the credical staffs in our city sales department.

In fact, all the clerical detail in the various departments of the Chicago Office, are included.

Q. Then, as general office manager, you have the general supervision and jurisdiction over the procedure and operations of those departments, is that correct?

A. Yes, sir.

Q. How long have you acted in that capacity, or exercised that supervision?

A. Well, as the assistant office manager for the last couple of years, I would say.

Q. And as general office manager, since April, 1942?

A. Since April, 1942.

Q. In the course of performing those duties, do you have direct charge and supervision of the billing and invoicing procedures in the Chicago office?

A. Yes, I do.

Q. Are you thoroughly acquainted with the billing and invoicing procedures of the Morton Salt Company in its Chicago office?

A. Yes.

Q. And have you had supervision of that procedure for the last several years?

A. Well, I would say since about 1930.

2382 Q. Since 1930?

A. Yes.

Q. Will you describe the geographical scope of the invoicing and billing operations of the Chicago office of the Morton Salt Company?

A. You mean in the various States in which we do our invoicing?

Q. That is correct.

A. I have a chart there. I wonder if I could use it.

Mr. Haslett: May I ask a couple of questions?

Trial Examiner Purcell: Is it agreeable to Mr. McBride to have this examination?

Mr. McBride: I have no objection.

By Mr. Haslett:

Q. Mr. Coyne, that chart you have in your hand, was that prepared under your supervision?

A. That is correct.

Q. And at your direction?

A. That is correct.

Q. And you are acquainted with the contents of that chart?

A. That is right.

Q. And you are able to testify as to its accuracy?

A. Yes, I am.

Mr. McBride: Now, if you will repeat my question, please.

2383 Trial Examiner Purcell: Read the question.

(The question above referred to was read by the Reporter.)

The Witness: The Chicago office would handle the billing for everything east of the Mississippi River, including the States of North and South Dakota, Minnesota, and Iowa, and the northern part of Missouri.

By Mr. McBride:

Q. And do the invoices or billings for all sales made in the territory described emanate from the Chicago office?

A. They do, with the exception of the local billing offices that we have in that particular territory to handle our metropolitan sales.

Q. Will you identify which are the local billing offices to which you just referred?

A. We have one in Milwaukee, one in Minneapolis, one in Detroit, St. Louis, New Orleans, and then our city billing territory in Chicago.

Q. Then, with respect to each of those billing offices to which you have just testified, the invoices or billings for metropolitan sales of those various cities come from the particular offices specified, is that correct?

A. Yes.

Q. And by metropolitan area, you mean what, the corporation of the city, plus any suburban territory ad-

2384 jacent to it, is that correct?

A. That is right.

Q. Is the invoicing and billing procedure of those sources under the supervision of the Chicago office?

A. Yes, it is.

Q. And is the supervision in particular within your scope of authority and duties?

A. Yes, it is.

Q. Are you acquainted with the billing and invoicing procedures of those branch offices to which you have just referred?

A. I am.

Q. Have you ever visited or examined the billing arrangements of the offices themselves to which you have just referred?

A. I have.

Q. From what offices do the invoices or billings emanate for the territory not included in your description as being the geographical territory covered by the Chicago and associated offices?

A. Well, we have billing offices in San Francisco, Kansas City, and Dallas, Texas.

Q. Then all the territory, exclusive of that east of the Mississippi and of the States of North and South Dakota, Minnesota, Iowa, part of Missouri, and part of Lou-
2385 isiana, come from either the Dallas, Kansas City, or San Francisco offices, is that correct?

A. Yes, sir.

Q. Are you familiar with the billing operations of the San Francisco, Dallas, and Kansas City offices?

A. Yes, sir.

Q. Have you at any time visited and examined billing procedures of those three offices?

A. Yes, I have.

Q. Within the period of the last four, or five, or six years?

A. Yes.

Q. Do you have general supervision and jurisdiction of the manner in which billings are made and the procedure to be followed in the San Francisco, Kansas City, and Dallas offices?

A. So far as routines are concerned, yes.

Q. Where are the general sales records and invoice records of the Morton Salt Company kept?

A. Chicago office.

Q. And those records are under your direct supervision?

A. They are.

Q. And you supervise the employees, do you, have the direct jobs of maintaining those sales and invoice records?

A. That is right.

2386 Q. Do you know, Mr. Coyne, approximately the percentage of billings which emanate from the Chicago office and its associated billing offices, and by associated billing offices, I mean the one in Minneapolis, Milwaukee, Detroit, St. Louis, and New Orleans, as contrasted to the

total billings throughout the country by the Morton Salt Company?

A. Yes, I do.

Q. What is that percentage?

A. About 70 per cent.

Q. In other words, approximately 70 per cent of the total billings of the Morton Salt Company emanate from Chicago and its associated offices?

A. Yes.

Q. And approximately 30 per cent, in the aggregate, emanate from the offices at San Francisco, Kansas City, and Dallas, is that correct?

A. That is correct.

Q. How did you arrive at that percentage?

A. Well, from the tabulation of our invoices, and the percentages as handled through the Chicago office, against the total billings of the Morton Salt Company.

Q. Did you make the tabulation to which you refer?

A. Yes.

Q. And those tabulations were made from the invoicing records of the Morton Salt Company?

2387 A. That is right.

Q. For purposes of clarity on the record, Mr. Coyne, will you assume that a sale of salt is made at some point in Indiana.

Will you describe the procedure followed by the Morton Salt Company in handling that order, from the time it is solicited, through the routine, to the plant for shipment, and back again, or whatever procedure is followed, using that as an example.

A. When an order is received by one of our salesmen in Indiana, it would be forwarded to the Chicago office, received in our mailing department, and sent to the clerical staff in our country sales department. From there, the order would be—

Q. Excuse me. Let me interrupt there. Will you clarify what you mean by country sales department?

A. Well, our country sales department handles all of the sales outside of the metropolitan area of Chicago.

Q. And do your country sales include sales in the metropolitan areas of the associated billing offices?

A. No, it would exclude those too.

Q. So that by country sales, you mean all sales within the billing jurisdiction of the Chicago office, exclusive of

the various metropolitan areas of Chicago and associated offices, is that correct?

2388 A. That is correct.

Q. Now, if you will, proceed with your description.

A. Well, the clerical staff, in our sales departments, in our country sales department, Chicago office, would verify prices, various grades of salt, and check the order in detail. In other words, it should be correct as to price and grades before it leaves their hands.

It would then be sent to our credit department, where they would investigate, that is, through the reference books, as to their credit rating, and check the account in general, to see whether or not they were in line for credit under our terms. Then they would pass the order on to our traffic department, where it would be rated, routed, and docked.

Q. Will you describe, if I may interrupt there, what you mean by rated?

A. Well, they would put the freight rate on it, to the point of shipment, or the destination, I should say.

Q. And by routed, you mean the selection of the railroad over which the shipment is to move?

A. That is right.

Q. And what do you mean by docked?

A. Well, that would be the plant to which it would be sent.

Q. And from the traffic department, where would it move?

A. It would be sent to our invoicing and order de-

2389 partment. There they would prepare the papers—well, they would check the car first to see that it had the required minimum weight in it, and then they would prepare the necessary shipping papers and acknowledgments, that is, salesmen's acknowledgments, and customers' acknowledgments. The latter would be later returned to our sales department, and the shipping papers would be checked in detail and verified, and sent to the plant.

Q. And after the plant receives those papers, then will you describe what happens in the plant?

A. Well, the plant receives the shipping papers. They are checked there as to the various brands for package material, and the necessary items of salt that are required, and they would make up a running order for the various departments in our plant until it is finally sent down, and the salt loaded in the car.

Q. After the salt has been loaded in the car, then what if anything happens regarding the papers on that order?

A. Well, the loading foreman would return the plant loading ticket to the plant office, and there the plant office would check it to note that all items had been loaded in the car and they would prepare such papers as are necessary for the Chicago office in returning the bills of lading and shipping report for our master records in Chicago.

Q. Now, is approximately that same procedure
2390 followed in the associated billing offices, and let me once more, for clarity on the record, say that whenever I refer to associated billing offices in the examination of this witness, I refer to Minneapolis, Detroit, Milwaukee, St. Louis, and New Orleans.

Now, is the invoicing and billing procedure the same in those associated offices as that which you have described with respect to the example for the Chicago office?

A. Same procedure.

Q. Does the Chicago office receive, in the normal course of business, any record of billings made out of these associated offices?

A. Yes, they do.

Q. So that in the Chicago office, as part of the sales records and invoicing records under your supervision, are complete records of billings out of the Chicago office, and out of each of the associated offices referred to, is that correct?

A. Yes.

Q. And you have complete charge of the invoicing procedure, and of those records, is that right?

A. That is correct.

Q. And the persons having to do with the completion and maintenance and entries on those records are under your direct supervision and authority?

2391 A. That is right.

Q. Now, you refer to the clerical staff in the plant office. Do each of the plants of the Morton Salt Company have a clerical staff in connection therewith?

A. Yes, they do.

Q. And does that staff, or part of it devote its time to the handling of orders in the manner which you have just described?

A. They do.

Q. Under whose supervision is the procedure for handling the invoices and orders at the plant clerical offices?

A. They are under the office manager's supervision.

Q. That is so far as the employees in that clerical office are concerned, is that correct?

A. Yes.

Q. What if any supervision do you have over the procedure followed by the plant offices, in so far as handling invoices and orders are concerned?

A. Well, we determine the procedure that they should follow.

Q. That is determined in the Chicago office?

A. That is determined in the Chicago office.

Trial Examiner Purcell: The question is what you do. Read the question, Miss Reporter.

(The question above referred to was read by the Reporter.)

2392 The Witness: I would determine the procedure that they would follow.

By Mr. McBride:

Q. So that if I understand your testimony correctly from start to finish, in the order, invoicing, and billing procedure in Chicago and associated offices, and in the plant offices, all of that is under your jurisdiction, as well as all of the records pertaining to that procedure, is that correct?

A. That is correct.

Q. And that has been true for the past several years?

A. Yes.

2393 Q. You referred, in your testimony, as to the various departments in the Chicago office, to the tabulating department. Will you describe the nature and operations of the tabulating department?

A. Well, the tabulating department is set up to take care of all our statistical work. That is for all sales analyses, and such reports as that.

Now, we have in our tabulating department the I. B. M. equipment; that would be the key punch machine, tabulator, and sorter, and they would receive a copy of every invoice rendered, and from that copy of the invoice, they would prepare all the required records.

Q. So that through the tabulating department go all the invoices and billings out of Chicago and associated offices, is that correct?

A. That is correct.

Q. And from that tabulation, you establish the tabulated

records of the Morton Salt Company in the Chicago office, is that right?

A. Yes.

Q. And that tabulating department is under your direct supervision and jurisdiction?

A. Yes.

Mr. McBride: Off the record.

Trial Examiner Purcell: Off the record.

2394 (Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: I will ask the reporter to mark this as Respondent's Exhibit 5 for identification.

(The document referred to was marked Respondent's Exhibit 5 for identification.)

By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit No. 5 for identification, and ask you to state what it is, if you will?

A. That is the purchases of the Morton's blue package salt by the Greenville branch of the Thomas & Howard Company for the years of 1940 and 1941.

Q. Does the tabulation in question purport to show the date of purchase, and the invoice number?

A. Yes.

Q. And does that also show the number of cases of blue package purchased on the respective dates?

A. It does.

Q. Who prepared that tabulation, Mr. Coyne?

A. I did.

Q. And it was prepared from what?

A. From copies of our invoices.

Q. And the copies of the invoices to which you refer are part of the permanent books and records of the Morton Salt Company at its Chicago office?

2395 A. They are.

Q. And does that tabulation represent the correct records of the Morton Salt Company, in so far as blue can sales to the Thomas & Howard Company at its Greenville, South Carolina, branch are concerned?

A. Yes.

Mr. McBride: Mr. Examiner, I offer Respondent's Exhibit No. 5 for identification in evidence as an amendment to, or superseding Commission's Exhibit 162, which, after checking with our records, so far as the Morton Salt Company records are concerned, we have found to be incorrect,

and should be amended in the form of Respondent's Exhibit No. 5.

Trial Examiner Purcell: Do you offer that in evidence?

Mr. McBride: I do.

Trial Examiner Purcell: Any objection?

Mr. Haslett: Mr. Examiner, I have no objection to the identification of the document, or to the accuracy of the document, being based upon the books and records of the Morton Salt Company, but I do object to the statement made at the identification of the document by the witness and the counsel for the Respondent, that this represents the purchases of the Greenville branch of the Thomas & Howard Company, when the record shows that the Thomas & Howard Company of Greenville, South Carolina, is a separate
2396 and distinct corporation, and is not a branch of any particular company.

Mr. McBride: If the Examiner please, I will take part of the amendment, but not all. I am not willing to concede a separate or distinct corporation. I am willing to identify it as the Thomas & Howard Company at Greenville, South Carolina.

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Of course, Mr. Haslett, no statement by this witness, and no statement by counsel in the offering of this piece of evidence can affect the facts with regard to the Thomas & Howard Company as ultimately proved; and then what is here said, with regard to the statements of the witness or counsel, would apply with equal force, that is, the tender, and the remarks made pursuant to the tender in evidence, that this Respondent's Exhibit No. 5 is to take the place of, or is amendatory to Commission's Exhibit No. 162. The two documents will have to stand for what they are worth, and on their independent bottoms.

There being no objection by the attorney for the Commission, the document offered will be received in evidence and marked Respondent's Exhibit No. 5.

(The document referred to, heretofore marked for identification RESPONDENT'S EXHIBIT 5 was received in evidence.)

2397 Mr. Haslett: There was no objection, other than to the use of the word "branch".

Trial Examiner Purcell: Other than to the use of the word "branch."

2398

Room 1123,
New Post Office Building,
Wednesday, October 7, 1942.
Chicago, Illinois,

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, Attorney for Respondent.

2399 Mr. Haslett: Mr. Examiner, yesterday Mr. McBride made a tender of the document now known as Respondent's Exhibit No. 5, which was received in evidence as a supplement to Commission's Exhibit No. 162.

I now note that I had stipulated with Mr. McBride that he was to check the figures and the invoice numbers and the type of commodities that appeared on the various invoice numbers on Commission's Exhibit 162, and if there were any corrections, why, we were to make such corrections on the exhibit.

I did not mean to recede from my position binding me to stipulate with Mr. McBride on yesterday. I, therefore, want the record to show that Respondent's Exhibit No. 5 is an amendment to Commission's Exhibit No. 162 and that Commission's Exhibit 162 will be disregarded by me in further connection with this case.

Trial Examiner Purcell: Let the record so show.

Mr. McBride: Mr. Examiner, before resuming the examination of Mr. Coyne on behalf of the respondent, I should like to make a statement for the record, which 2400 I think will facilitate the hearings here in Chicago.

From time to time I will have occasion, as I did yesterday, to refer to Thomas & Howard. The record is rather replete with evidence regarding the affiliation or lack of affiliation, or the corporate connection or lack of it, brought out both by direct examination on behalf of the Commission and by cross-examination.

For the balance of the hearings in Chicago, on behalf of the respondent, when I refer to Thomas & Howard or Thomas & Howard companies or branches of Thomas & Howard, or where any witnesses on behalf of the respondent make such reference, the reference will not be made in the sense of either a conclusion of fact or a conclusion of law, and it will not be made as an effort either to prejudice Mr. Haslett's position or to prejudice my own position as to the corporate set-up of the Thomas & Howard companies, but, rather, reference will be made for ready identification of figures to be submitted by the respondent in this case.

Trial Examiner Purcell: Let the record so show.

You may proceed.

Mr. McBride: Will you resume the stand, Mr. Coyne?

Trial Examiner Purcell: Let the record show Mr. Coyne resumes the stand.

2401 ARNOLD J. COYNE resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. McBride.

Q. Mr. Coyne, the sales price of Morton's Blue Can, when moving in carload shipments, is a dollar and a half per case, is that correct?

A. Yes, sir.

Q. And when moving in less-than-carload shipments, it is $1.60 per case, is that correct?

A. That is correct.

Q. In either instance, the Morton Salt Company pays the entire freight on the shipment, isn't that right?

A. That is right.

Q. So that the price to the customer, according to whether or not it is moving in a carload or in a less-than-carload shipment, is $1.50 or $1.60, as the case may be, regardless of the amount of freight involved, is that right?

A. That is right.

Q. That being true, then, the net sales return in dollars and cents to the Morton Salt Company on the Blue Package would be something less than $1.50 or something less than $1.60, as the case may be, depending upon the amount of freight paid by the Morton Salt Company, is that right?

A. That is right.

2402 Q. Do you know what the average net return to the Morton Salt Company in dollars and cents is on the sale of its Blue Package, after the exclusion of freight charges paid by the Morton Salt Company?

A. I do.

Q. Will you state what that figure is?

A. It would average about $1.40½.

Q. Will you describe how you arrive at that computation?

A. By tabulation of our invoices for the Chicago and associated offices to arrive at the total net sales after freight, and then determining the number of containers of Blue Can against those sales, and dividing it into the total net sales.

Q. And you say that was made by way of a tabulation of the invoice records of the Morton Salt Company?

A. Yes, it was.

Q. Did you personally make that tabulation or was it done by someone under your supervision?

A. Well, it was tabulated by our tabulating department. They are under my supervision.

Q. And the tabulation was made at your direction and under your supervision in that respect?

A. It was.

Q. Will you state the period covered, meaning by that was it for 1941 or 1940 or for a five-year period, or what, on which the figures were based?

2403 A. Well, those figures were based from September 1st of 1939 to August 31st of 1940.

Q. Which would be an entire twelve months' period?

Mr. Haslett: Mr. McBride, may I have just a moment here to confer with my associate?

Trial Examiner Purcell: Let the record show Mr. Haslett's request.

Mr. Haslett: Mr. Examiner, I want to note an objection to the last two questions and make a motion to strike the answers to the last two questions on the ground that it is irrelevant and immaterial to the issues in this case, what the freight differential is between the selling price and between the base price less freight, that is, $1.40½ and $1.50. I don't see how that has anything to do with quantity discount.

Mr. McBride: If the Examiner please, one of the de-

fenses available to the respondent in a Robinson Patman Act case is that of justifying discounts by cost savings. I think counsel will find that in due course in the presentation of such a defense, which is definitely contemplated and prepared in this case, that this will have a very definite bearing on the cost figures and the cost defense of the respondent.

It is utterly impossible to present the entire scope of a cost defense all at one fell swoop and, necessarily,
2404 must take it piecemeal. This is one factor in it and, by reason of that factor, it is entirely necessary to the respondent's case.

Trial Examiner Purcell: That is sufficient. The motion to strike is overruled.

Mr. Haslett: I would like to be heard further on it, Mr. Examiner.

Trial Examiner Purcell: I thought you had completed. Let the argument of counsel on this question be on the record.

Mr. Haslett: The issues in the case are not savings in the cost of transporting the product. The issues in the case are savings in the cost of selling the product, and the freight differential would have nothing to do with the savings in the cost of selling the product, if they paid it to all customers.

It is obvious from the question and answer that it is irrelevant testimony and it has nothing to do with the issues in this case. All customers get the same price on the $1.50 salt, that is, on the buying on a carload basis, and all on less-than-carload basis get the $1.60 price. The dispute is not on that at all. It is on the quantity basis, whether or not the differentials in price are justified, and I use the word "justified" without any connotation of a legal conclusion.

2405 Trial Examiner Purcell: Mr. Haslett, I am not prepared at this early stage of the presentation of the defense to say that freight rates or freight differentials do not enter into any of the issues of the case.

As I conceive it, if the defense here is going to be purely one of justification, I think we have very competent counsel here representing the respondent. He certainly knows what he is doing. He has prepared his defense along certain lines and, if it should eventuate, according to you or

according to your argument there, that it is not a defense, well, so be it.

I am going to permit the defense to proceed along such lines as laid out. If they are successful, all right; and, if they are not, then the testimony may be disregarded.

Mr. Haslett: Mr. Examiner, if the Examiner is overruling counsel for the Commission's objection to this irrelevant testimony, then I think it is incumbent upon counsel for the respondent to make the records available to the Commission's counsel for checking.

Trial Examiner Purcell: I will so order upon motion of counsel for the Commission.

Mr. Haslett: That these records should be made available for checking.

Trial Examiner Purcell: Absolutely, and if they are not made immediately or presently available, I shall
2406 refuse to permit any tabulation, or any testimony predicated upon such tabulation. As a matter of fact, if counsel for the Commission had objected at the time Mr. Coyne testified to the net returns of the Morton Salt Company of $1.40½ a case, I should have sustained your objection.

Mr. Haslett: Now, what was the difference between the objection that I made and the motion to strike? I made the motion to strike the answers based upon the testimony as being irrelevant and immaterial to the issues of the case.

Trial Examiner Purcell: No, it is not irrelevant, and your motion to strike did not cover the answer on the $1.40½ testimony.

Mr. Haslett: I beg to differ with the Examiner.

Trial Examiner Purcell: Go back, please, Miss Reporter, and read the record.

(The record was read by the reporter.)

Mr. Haslett: By my motion I meant to cover the question regarding the freight differential of $1.40½ and $1.50.

Trial Examiner Purcell: Well, it did not so cover.

Mr. Haslett: Then I make a general blanket motion to strike all testimony relative to the freight differential of $1.40½ and $1.50, predicated upon the fact that it is irrelevant and immaterial to the issues in the case.

2407 Trial Examiner Purcell: I will grant that motion.

Mr. McBride: Just a moment. I think I would like to have a hearing on that. That is something else. Will you read the motion back, Miss Reporter?

(The record was read by the reporter.)

Mr. McBride: Before the Examiner rules finally on that, I should like to discover, if I may, wherein lies the difference between that motion and the first motion. The motion now is, as I see it, to strike any testimony about a freight differential because it is immaterial and irrelevant to the issues of the case, and the previous motion was to strike the answers to the last two or three questions because the factors about freight were irrelevant and immaterial to the case.

As I understood it, we had thrashed that out, that I was permitted to produce in evidence this factor as preliminary to the question.

Trial Examiner Purcell: Yes, my ruling refers to the testimony of Mr. Coyne, that, as the result of certain tabulations he had made over a certain period, it showed a net return after the deduction of freight to the Morton Salt Company of $1.40½ per case.

Now, that testimony is stricken.

Mr. McBride: Well, I haven't even been heard on it yet, Mr. Examiner.

2408 Trial Examiner Purcell: Do you wish to be heard?

Mr. McBride: Yes. I was in the process of trying to be heard on that second motion.

Trial Examiner Purcell: You can produce that testimony in due course and by a proper method. I couldn't permit a witness to get on the stand here and testify to the result of certain tabulations that he had made or were made in some department over which he had supervision. That isn't the proper way to prove up the point.

Mr. McBride: In the first place, that isn't Mr. Haslett's motion. He is asking that it be stricken because it is immaterial and irrelevant.

Trial Examiner Purcell: It is not, immaterial and it is not irrelevant, but it is inadmissible on the ground that I have stated.

Mr. McBride: But he hasn't made that motion yet, and I want this record clear as to what we are arguing about.

Trial Examiner Purcell: Then I will make the ruling sua sponte.

Mr. McBride: I don't think the Examiner has the power.

Trial Examiner Purcell: I do have the power.

Mr. McBride: Do I understand that the Examiner is

going to use his discretion as to what I can put into
2409 the case, regardless of what Mr. Haslett's motions are?

Trial Examiner Purcell: No, that is not it. I stated the grounds on which I made the ruling. I think I am right. I also ruled that it was too early, at this stage of the defense, for me to rule out all testimony as to freight rates, freight differentials, who pays them, or what. I think it is very material to the respondent's case in the matter of cost distribution, the ultimate fixing of a price at which the product may be sold.

Mr. McBride: Then, as I understand, Mr. Examiner, you now agree with me that both motions by Mr. Haslett go to the question of immateriality and irrelevancy, and you are overruling those motions, is that correct?

Trial Examiner Purcell: Yes.

Mr. McBride: And you have, prior to any argument on the other score, you have, on your motion, ruled out the evidence because it is not properly presented?

Trial Examiner Purcell: That is right.

Mr. McBride: Before you make that final, I wish to argue that motion.

Trial Examiner Purcell: Do you wish that on the record?

Mr. McBride: Yes, very much so.

In the first place, I wish the record to show that I take exception to the procedure followed by the Examiner,
2410 on his own motion, of determining the method of presenting evidence, the manner in which it shall be presented, and the question of whether or not it is properly tendered in the course of this hearing. I feel that that is beyond the jurisdiction and scope of the Examiner's prerogative in this case, and it lies with counsel for the Commission to note such motions and objections as he sees fit on that and for the Examiner to rule thereon.

Having made that objection to the procedure and without prejudice to saving that objection on the record, I wish to point out to the Examiner, in connection with his ruling, that we have here a man who qualified at length yesterday as the general office manager of the Morton Salt Company. He fulfilled that capacity for a substantial length of time.

We described in detail his duties, the scope of his authority, the scope of the departments operating directly under his authority and supervision, and now, this morning, we

are introducing his testimony with respect to the average net returns to the Morton Salt Company after freight on the sale of its Blue Package.

He has described in detail how that figure was arrived at. As the general office manager of that company and by reason of the foregoing facts, he is entirely competent to testify to those facts.

2411 So far as I know, there is no rule of evidence that requires a corporation to gather before an Examiner in a Federal Trade Commission hearing or anywhere else all freight bills, all invoices, or all anything else, so long as the witness testifying first proves his competency to testify as to what the books and records of his corporation show, which are directly under his control and supervision, and where certain computations are made by himself or by persons under his direct supervision and at his direction in order to arrive at the figures testified to.

Trial Examiner Purcell: I made no such ruling, that it is necessary to produce freight bills, and so forth, before the Examiner.

I think it is incumbent upon you, before you undertake to have your witness testify as to the result of any tabulation he has made, to make an offer to the attorney for the Commission to permit him to have access to each and every one of the original records forming the basis of the computation.

Mr. McBride: I haven't the slightest objection to making that offer, Mr. Examiner, and I will make it now; but I should like to make it retroactive, if that is the thing we are worrying about.

Trial Examiner Purcell: Very well.

2412 Mr. McBride: I will make it retroactive as to this witness' testimony and I will have a continuing tender on everything else.

Trial Examiner Purcell: That was the point on which I ruled. That was the basis of my ruling.

Mr. Haslett: Mr. Examiner, may I be heard just a moment?

Trial Examiner Purcell: Yes.

Mr. McBride: May I finish one statement first, Mr. Haslett?

Mr. Haslett: Yes.

Mr. McBride: In making that offer, Mr. Examiner, because of the limits of physical transportation, and what

not, I would like to make the offer in the form of free access during business hours at any time, or I shall personally stay down with counsel for the Commission at any time after hours for the purpose of examining those records in their original form and in their original place in the general offices of the Morton Salt Company.

I don't wish to make the tender of bringing them all down to this hearing room.

Trial Examiner Purcell: I understand.

Mr. Haslett: Mr. Examiner, counsel for the Commission does not recede from the position as stated that the testimony is irrelevant and immaterial, because it is predicated upon an average and not upon an actual net
2413 return, and the controversy between the Examiner and Mr. McBride, is, of course, predicated upon another point and it does not involve the irrelevancy or immaterialty of the testimony, but I want my position to be very clear on the record, that I have not receded from my position that it is irrelevant and immaterial to the issues of the case.

Trial Examiner Purcell: I understand your position, Mr. Haslett, and my ruling stands.

Mr. Haslett: Now may we go off the record just a moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

In the light of the tender of the attorney for the respondent to make available to the Commission's attorney and his associates all of the records of the Morton Salt Company bearing on this or any future testimony to be introduced, the ruling of the Examiner striking from the record the answer of the witness Coyne is rescinded.

By Mr. McBride:

Q. Mr. Coyne, I show you now Commission's Exhibits Nos. 41; 42-A, B, C, and D; 43-A, B, and C; 44; 45-A and B; 51; 63; 67; 176-A, B, and C; 177; 178; 179-A, B, C, D, E, F, and G; 181-A, B, C, D, E, F, G, H, I, J, and K; and
182-A, B, and C, and ask you to state, after examining
2414 the same, whether or not each of those tabulations were made by you or under your direction.

A. They were made by me or under my direction.

Q. At whose request did you make those various tabulations, Mr. Coyne?

A. Those were requested by Mr. Peterkin, Jr.

Q. Then, pursuant to that request, you either made each of the tabulations referred to and identified as those Commission's exhibit numbers or they were made by someone under your supervision, is that correct?

A. That is correct.

Q. In making those tabulations, will you describe how they were prepared?

A. Well, they were prepared from tabulations of the invoices by our tabulating department.

Q. And the tabulating department tabulated the data shown there from the invoice records of the Morton Salt Company, is that correct?

A. That is correct.

Q. And the tabulations in each case represent truly and correctly the original sales or invoice records of the Morton Salt Company, is that correct?

A. That is right.

Q. Now, referring to Commission's Exhibit No. 41, have you got that?

2415 A. Yes.

Q. Will you please examine that exhibit and state whether or not a date or period covered by the exhibit is shown on the exhibit itself?

A. No, there is no date shown.

Mr. McBride: Off the record.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that the list of customers appearing on Commission's Exhibit No. 41, which was prepared by the Morton Salt Company in the manner described by the witness now on the stand, pursuant to subpoena duces tecum served on Mr. Daniel Peterkin, Jr., by the Commission, are the customers receiving the amounts respectively shown for the period specified in the subpoena, being August, 1936, to September, 1940, and that the tabulation does not include any customers subsequently qualifying for a quantity discount or subsequently receiving any competitive adjustment after September of 1940?

Mr. Haslett: It is so stipulated.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

2416 Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. Will you now refer to Commission's Exhibit No. 45-A and B, Mr. Coyne, and will you state whether or not that exhibit shows the dates covered by the tabulations thereon?

A. Yes, it does.

Q. Will you indicate what the dates are?

A. It is for the calendar years of 1936 through 1941.

Q. And will you state what that exhibit shows, the title of it?

A. Well, that is the sales to the C. D. Kenny Company.

Q. Of what type of salt?

A. All types of salt.

Q. Of all types of salt?

A. Yes.

Q. Now, examining the first column of figures, will you describe what those figures are?

A. Well, that is the number of containers of the Blue Package salt sold to them in the respective months, under the respective years.

Q. The respective months indicated, and the respective years in the tabulation?

A. Yes.

Q. Now, examining the second column of figures of the exhibit, will you state what those figures show?

2417 A. Well, that would be the net value after freight.

Q. The net value after freight of what?

A. The Blue Package salt.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that in your examination of Mr. Peterkin, Jr., as a witness on behalf of the Commission, in the course of identifying Commission's Exhibits Nos. 45-A and B, it was clearly shown on the record as to the nature of the sales figure tabulations in columns 3, 4, 5, and 6 of that exhibit, and that the sales figures in each of those columns just

specified are in fact the net sales figures after freight and without adjustment for returns and allowances and without adjustment for quantity discounts, but simply net sales after freight of the Blue Can, other table salt, other salt than table salt, and the total of those three in columns 3, 4, 5, and 6, respectively?

Mr. Haslett: I won't stipulate that the examination of Mr. Peterkin was not clear, but I will stipulate that the document known as Commission's Exhibit No. 45-A does show the net return on table salt after the deduction
2418 for freight.

Trial Examiner Purcell: Are you willing to accept Mr. Haslett's amendment?

Mr. McBride: I am willing to accept that amendment, and simply wish to stipulate by way of amplification of the exhibit in the manner shown.

Mr. Haslett: All right, it is stipulated.

Mr. McBride: Mr. Haslett, is it stipulated by and between counsel for the Commission and counsel for the respondent that Commission's Exhibit No. 51 shows in the third column the net sales return after freight and without adjustment for returns and allowances and without adjustment for any discounts paid on sales of the Blue Can, and that the fourth column shows net sales after freight without any other adjustments of the sale, of all other types of sale, exclusive of the Blue Can, and that the last column shows net total sales after freight and without any other adjustments for the third and fourth columns?

Mr. Haslett: That is correct, sir.

Mr. McBride: Is it also stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that the tabulations shown on Commission's Exhibits 45-A and B represent total sales to C. D. Kenny Company and all of its branches, and that Commission's Exhibit No. 51 represents a tabulation of total sales to
2419 all Thomas & Howard companies, Timberlake Grocery Company, and the Christiansburg Canning Company?

Mr. Haslett: It is so stipulated.

Trial Examiner Purcell: We will have a recess for five minutes at this time.

(A short recess was taken.)

Trial Examiner Purcell: Come to order. Proceed, Mr. McBride.

Mr. McBride: Now, will you look at Exhibits 176-A, B, and C.

Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Commission's Exhibits Nos. 176-A, B, and C show the tabulation of sales to all branches, by branches, of the C. D. Kenny Company, and that each of the figure columns represent net sales figures after freight and without adjustments for returns and allowances and without adjustments for any discounts paid to the respective branches in the respective years shown, is that correct?

Mr. Haslett: That is correct, sir.

Mr. McBride: Now look at Exhibit 178.

Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that the tabulation regarding Timberlake Grocery Company on Commission's Exhibit 178 shows in the third, fourth,
2420 and fifth columns net sales tabulations after freight without adjustment for returns and allowances and without adjustment for any discounts paid?

Mr. Haslett: That is correct.

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that the sales tabulations appearing in the second, third, fourth, and fifth columns of Commission's Exhibits Nos. 179-A to G, inclusive, are net sales after freight and without adjustment for returns and allowances and without adjustment for any discounts paid?

Mr. Haslett: That is correct.

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that with respect to the tabulations appearing on Commission's Exhibits Nos. 181-A to K, inclusive, the tabulations on each page appearing in columns 3, 4, and 5 are net sales figures after freight and without adjustment for returns and allowances and without adjustment for any discounts paid?

Mr. Haslett: That is correct.

Mr. McBride: I would like to have this marked as Respondent's Exhibit No. 6 for identification.

(The document referred to was marked "Respondent's Exhibit No. 6" for identification.)

2421 By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit No. 6 for identification and ask that you examine the same and state what it is, if you know.

A. It is a classification of the Blue Can customers.

Q. Who prepared that exhibit, Mr. Coyne?

A. I prepared it.

Q. And from what did you prepare the exhibit?

A. From our sales records.

Q. By your sales records, what sales records in particular do you mean?

A. Well, those that covered all of our Chicago country billing territory, exclusive of city billings in Chicago and the associated offices.

Q. So that this was prepared by you from the sales records of the Morton Salt Company, known as the country sales billing which you previously described in your testimony, is that correct?

A. That is right.

Q. And does not include any billings for metropolitan Chicago or for the metropolitan associated billing offices which you previously identified; is that right?

A. That is right.

Q. What period was covered in the examination for the preparation of this exhibit?

2422 A. A period of from January 1, 1941, to December 31, 1941.

Q. Now, were the entire country billings of the Chicago office examined for that entire period?

A. They were.

Q. Did you personally examine them?

A. I did.

Q. And from the data arrived at, you prepared the tabulation in question, is that right?

A. That is right.

Q. Will you describe what appears in the first column of the tabulation headed by the words "Classification by cases purchased"?

A. Well, the purchases for each customer during that period were determined, and then we grouped them in lots of 500, from nothing to 50,000 cases and over.

Q. So that the figures in the first column represent the 500 group brackets to which you just referred, is that right?

A. That is correct.

Q. Now, referring to the next-to-the-last figure in that column, does that show a bracket of 500?

A. No, it doesn't.

Q. Why does that show a bracket other than a 500 bracket?

A. Well, we didn't have any in there. We went from, say, 27,501 to 49,999. We skipped through there, because there weren't any customers in that classification.

2423 Q. All right, now, referring to the second column on the tabulation headed by the words "Number of customers in class", will you describe what those figures are in that column?

A. Well, that would be the number of customers in the particular grouping in the first column.

Q. Then, if I understand your testimony correctly, taking the first line of each column, there were 3,643 customers of the Morton Salt Company during the calendar year 1941 which purchased between one and 500 cases of the Blue Can during that period, so far as the Chicago country sales billings are concerned, is that correct?

A. That is right.

Q. And would that be true with the related figures on each line thereafter in both of the two columns?

A. Yes.

Mr. McBride: I offer the exhibit in evidence, Mr. Examiner.

Mr. Haslett: Mr. Coyne, for my information, so that the record may be very clear, what is the difference between a city customer and a country customer?

The Witness: There is no difference. It is our physical set-up, whereby there is, or we have the city sales department and the country sales department. In other words, the city would just handle that metropolitan area due to the number of telephone calls, and such things as that,

2424 so they would be entirely familiar with their local customers.

Mr. Haslett: Those customers are not included in this tabulation?

The Witness: They are not included in this tabulation.

Mr. Haslett: But all customers that purchase round package salt that are outside the city of Chicago are in this tabulation?

The Witness: Correct.

Mr. McBride: I have one amendment, so far as the Chicago country billings are concerned. May we go off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: If I may rescind my tender, if the Examiner please, and make further qualifying questions?

Trial Examiner Purcell: The tender of Mr. McBride is withdrawn at this time, the tender as to the exhibit.

By Mr. McBride:

Q. Mr. Coyne, are there any tabulations in this exhibit based on any of the billings out of the Kansas City billing office of the Morton Salt Company?

A. No.

2425 Q. Is that also true of the Dallas office of the Morton Salt Company?

A. Yes.

Q. And is that also true of the San Francisco office of the Morton Salt Company?

A. Yes.

Q. So that this tabulation does not reflect the billings out of either Kansas City, Dallas, or San Francisco, is that correct?

A. That is correct.

Q. Does this tabulation reflect the billings out of either Minneapolis, Detroit, Milwaukee, St. Louis, or New Orleans?

A. No, it doesn't.

Q. Those offices, I believe you identified them as city sales billing offices for their immediate respective metropolitan areas in your previous testimony, is that correct?

A. Yes.

Q. And none of those billings are reflected in this particular tabulation?

A. No.

Q. Are the billings of the Chicago office, insofar as city sales in the Chicago metropolitan area are concerned, reflected in this tabulation?

A. No.

Q. So that the billings which are reflected are the
2426 country sales billings of the Morton Salt Company at its Chicago office, exclusive of all metropolitan billings in the Chicago territory, is that right?

A. Yes.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Make your tender.

Mr. McBride: Mr. Examiner, I now offer Respondent's Exhibit No. 6 for identification in evidence.

Mr. Haslett: I object to the receiving of the document in evidence on the ground that it is immaterial to the issues of the case.

Trial Examiner Purcell: Is that the only ground of your objection?

Mr. Haslett: That is right, sir.

Trial Examiner Purcell: The objection is overruled and the document will be received and marked in evidence as Respondent's Exhibit No. 6.

(The document referred to, heretofore marked for identification "RESPONDENT'S EXHIBIT NO. 6", was received in evidence.)

2428 Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit No. 7-B for identification.

(The document referred to was marked "Respondent's Exhibit 7-B" for identification.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit No. 7-A for identification.

(The document referred to was marked "Respondent's Exhibit 7-A" for identification.)

ARNOLD J. COYNE resumed the stand and testified further as follows:

Direct Examination by Mr. McBride (Continued).

Q. Mr. Coyne, I show you Respondent's Exhibit No. 7-B for identification and ask you to examine the same and state what it is, if you know.

A. It is a tabulation of the purchases of the Blue Can for the city of New Orleans.

Q. And what period does that cover, Mr. Coyne?

A. From 1937 through 1941.

Q. And does it show purchases by individual years for the period which you have just specified?

2429 A. It does.

Q. Who prepared this tabulation, Mr. Coyne?
A. I prepared it.
Q. And from what did you prepare it?
A. I prepared it from a tabulation of the invoices.
Q. A tabulation of the invoices of what?
A. For the billings for the city of New Orleans.
Q. And you are referring now to the billings on the Morton Salt Company for the city of New Orleans, is that correct?
A. I am.
Q. For each of the years in question, 1937 to 1941, inclusive?
A. Yes.
Q. From the tabulations to which you refer, you prepared the schedule No. 1 which is identified as Respondent's Exhibit No. 7-B for identification, is that correct?
A. Yes.
Q. Will you describe the identity of the items in the first column of Respondent's Exhibit No. 7-B for identification?
A. Those are the annual net sales.
Q. Excuse me. I mean in the first column, the printed items over there, not the first figures column.
A. Well, the details would be on Schedule 1-A.
Q. Which is referred to in the footnote on Re-
2430 spondent's Exhibit No. 7-B for identification, is that correct?
A. Yes.
Mr. McBride: Let me state, for the purposes of clarity on the record, that to the extent that either I or the witness may refer to Schedule No. 1, we mean Respondent's Exhibit No. 7-B for identification, or vice versa; and to the extent that reference is made to Schedule 1-A, we mean Respondent's Exhibit No. 7-A for identification, or vice versa.
By Mr. McBride:
Q. Then the detail on the first item, "Total discount retailers" appears on Schedule No. 1-A, is that correct?
A. Yes.
Q. And is that true of each of the other classification titles appearing in that first column?
A. It is.
Q. Then, looking to the first column of figures appearing on Schedule No. 1, will you state what those figures are?

A. Those are the annual net sales after freight for each class.

Q. So for what year would that be, Mr. Coyne?

A. For the respective years shown on the schedule.

Q. In other words, the figure 6,062.09 appearing in the first column of figures would be the net sales of Blue Can after freight for the year 1937 in the city of New
2431 Orleans, as shown under the classification denominated "Total discount retailers", is that correct?

A. That is correct.

Q. And with each of the other figures in the first column of tabulations, those would likewise be the respective total net sales after freight of Blue Can for the year 1937 for each of the classes shown in the first column, is that right?

A. Yes.

Q. And the figure $19,408.54 would be the total for the year 1937 for all classes specified, is that right?

A. Yes, sir.

Mr. Haslett: May we be off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, I would like for the record to show my objection to this line of questioning as to the identification of the documents known as Respondent's Exhibits for identification 7-A and 7-B, and I would like to be informed as to the purpose of the presentation of this type of evidence.

Mr. McBride: Well, without meaning to be an obstructionist, Mr. Examiner, it strikes me that Mr. Haslett is quite premature in his objections at this time.

I take it it is within my prerogatives on behalf of
2432 the respondent to identify any instrument which in my judgment could be offered in evidence in support of the respondent's case.

The process of identification of any instrument is not always, and, in fact, very often is not, an enlightening process as to what the instrument is to be used for. In due course, when the tender is made of the instrument, it is then within Mr. Haslett's right to object, and at that time, why, it is appropriate to show the basis of the offer and the purpose.

Trial Examiner Purcell: That is enough, Mr. McBride.

It is very rarely that an objection is interposed in the identification of documents. The objection is overruled.

Mr. Haslett: Mr. Examiner, I realize that the statement just made by Mr. McBride is correct, and I am willing to admit that I am rather premature in my objection, but it was only for my own enlightenment that I did note the objection and ask that question.

I will withdraw my objection and wait until the time that the offer is made.

Trial Examiner Purcell: Proceed, Mr. McBride.

By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit No. 7-A for identification and ask you to state what it is, if you know.

2433 A. This is a detailed tabulation of the purchases of Morton's Blue Can in the city of New Orleans for the years of 1937 through 1941.

Q. And does that tabulation show the purchases of the Blue Can in the city of New Orleans by individual calendar years or by the entire period which you specified?

A. By individual calendar years.

Q. Referring to the first column on the tabulation, will you state what appears in that column?

A. Do you mean the headings for the groupings?

Q. That is correct.

A. Well, it is a classification of the various types of customers in the city of New Orleans.

Q. And then the names appearing under the classifications are the names of the individual customers of the Morton Salt Company in the city of New Orleans, is that correct?

A. That is correct.

Q. Now, referring to the first classification, "Discount retailers", will you identify the customers of the Morton Salt Company which have been classified under that heading?

Mr. Haslett: Mr. Examiner, may I note an objection to this line of identification? I don't want to be super-technical about the matter, but yet I have a duty to perform, and I think that the record is being cluttered up with the

2434 contents of the document when the document speaks for itself. He is getting the contents of the document into the record indirectly, when the document should be offered and let it stand or fall upon its own weight.

Trial Examiner Purcell: Mr. Haslett, I quite agree with you. Mr. McBride, I think in the matter of identification it isn't necessary to go into all the details that you are undertaking to go into.

After the document has been offered in evidence, in due course, then you may undertake to examine your witness at any length you choose to, looking to an interpretation of what the document itself contains; but when presented for identification only, the merest explanation, sketchy explanation of what the instrument is, is quite sufficient, and that is why I suggested to you at the outset that if we are going to have a great many of these documents that they be given a definite designation as to what they are, if they are recapitulations or statements in detail of New Orleans, Cincinnati, New York, or what; and then, when you offer it for identification, ask the witness what it is and all he has to do is simply read the caption.

Now, as Mr. Haslett points out, I don't wish to take up a lot of time that isn't necessary, but you are getting something into the record here improperly, if for some reason or other these documents are not being admitted in evidence.

2435 Do you agree with me, Mr. McBride?

Mr. McBride: If the Examiner please, I agree with you with respect to my last question, when I asked the witness to identify the customers under the first classification. To be sure, the instrument speaks for itself on that score. It wasn't done with the intention of getting into evidence what has not been admitted.

Trial Examiner Purcell: I am convinced of that. I am sure Mr. Haslett is also.

Mr. McBride: But by way of endeavoring to have a further and clearer identification. I have no objection to making a short-cut, general identification of the instrument, offering it in evidence, and then going over it step by step.

Trial Examiner Purcell: All right, sir.

Now, with regard to instruments Nos. 7-A and 7-B for identification, I think you have gone quite far enough sir.

Mr. McBride: With one exception; I think I have not yet asked Mr. Coyne regarding the source of the data on 7-A. That I wish to do; and, in accepting the suggestion of the short cut, in the event that objections are made on the grounds of insufficient identification, then I should wish

to reserve the right to proceed further.

Trial Examiner Purcell: I anticipate that no such
2436 objection will be made. I may be presumptuous in that, but judging the future by the amicable relations of counsel in the past in this case, I anticipate no such event.

By Mr. McBride:

Q. Who prepared Respondent's Exhibit No. 7-A for identification, Mr. Coyne?

A. That was prepared by me.

Q. And from what did you prepare it?

A. From the data furnished by our tabulating department, which is under my supervision.

Q. And from where did the tabulating department get the basis of its data?

A. From the tabulation of the invoices for the city billings of the city of New Orleans.

Q. And this exhibit 7-A, Respondent's Exhibit 7-A for identification, correctly represents the tabulations of the sales records for the city of New Orleans of the Morton Salt Company on Blue Can sales for the period indicated, is that correct?

A. That is correct.

Q. With respect to Respondent's Exhibit 7-B for identification, is that a recapitulation of the details found on Respondent's Exhibit 7-A for identification?

A. It is.

Mr. McBride: I offer Respondent's Exhibits 7-A
2437 and 7-B for identification in evidence.

Mr. Haslett: Mr. Examiner, I note an objection on behalf of the Commission to Respondent's Exhibits 7-A and 7-B, based upon the materiality of the document. I feel that they are immaterial to the issues of this case and should not be received in evidence.

Trial Examiner Purcell: Is the materiality the only ground of your objection?

Mr. Haslett: That is the only ground.

Trial Examiner Purcell: Objection overruled. You may receive the two instruments, Miss Reporter, and mark them as Respondent's Exhibits 7-A and 7-B in evidence.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 7-A and 7-B", were received in evidence.)

By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit 7-A and refer you to A. & P. Tea Company, being the first account under "Discount retailers" appearing on that tabulation.

Will you state what Blue Can sales of the A. & P. Tea Company are included for each of the years 1937 to 1941, inclusive?

A. The purchases of their New Orleans warehouse in the area serviced by it.

Q. In other words, that represents the Blue Can 2438 sales of the Morton Salt Company to the A. & P. Tea Company warehouse in the city of New Orleans, is that correct?

A. That is correct.

Q. And those figures, as is true of all the other sales tabulations, are the net sales after freight figures in each instance, is that right?

A. It is.

Q. Now, with respect to H. G. Hill Stores, Inc., will you state what sales are included for that particular customer?

A. Only those for the city of New Orleans.

Q. By the "city of New Orleans", you mean Hill Brothers in New Orleans, Louisiana, is that correct?

A. That is right.

Q. Are there any sales included in any of the figures for H. G. Hill Stores, for the Hill Stores at Nashville, Tennesee, or the Hill Stores at Birmingham, Alabama?

A. No.

Q. With regard to Capitol Stores, will you state what sales to Capitol Stores are included?

A. Just those for the city of New Orleans.

Q. Are there any sales included in this tabulation, so far as Capitol Stores are concerned, to its warehouse or retail units in Baton Rouge, Louisiana?

A. No, there is not.

Q. With respect to United Cash Grocery, what 2439 sales are included?

A. New Orleans only.

Q. Then the figures at the bottom of the classification "Discount retailers" for each of the years represents what, referring, for example, to $6,062.09?

A. That would be the annual net sales after freight for the group shown under "discount retailers."

Q. Now, do all the purchasers under the group "Discount retailers" operate in the city of New Orleans?

A. Yes, they do.

Q. Are there any discount retailers buying Blue Can from the Morton Salt Company not included in the grouping "Discount retailers"?

A. No.

Q. What discount is paid to the Great A. & P. Tea Company, if you know?

A. 15 cents per case.

Q. And is that a quantity discount?

A. It is.

Q. What discount is paid to H. G. Hill Stores, Inc., if you know?

A. 10 cents per case.

Q. And is that a quantity discount?

A. It is.

Q. Based upon what, Mr. Coyne?

2440 A. On their qualification as a 5,000-case buyer.

Q. What discount, if any, is paid to Capitol Stores, if you know?

A. There is no discount paid to Capitol Stores.

Q. Why have you included them, then, as discount retailers in this classification?

A. Well, for comparative purposes, under retailers.

Q. What does the 7½ cents represent immediately after the name Capitol Stores?

A. It represents the 7½ cents per case competitive allowance paid to them through Consolidated Companies, Inc.

Q. Is that likewise true of United Cash Grocery?

A. It is.

Mr. Haslett: I assume, Mr. McBride, that the term "competitive allowance" has no legal connotation intended?

Mr. McBride: My statements for the record with respect to competitive adjustment and allowance and qualification all the way through is without prejudice to anybody's legal conclusions or arguments.

Mr. Haslett: And that would be true as to the second note "but receive competitive allowances" at the bottom of the page of Respondent's Exhibit 7-A?

Mr. McBride: That is correct, and you will find that employed, Mr. Haslett, on a number of similar exhibits, and it is not the intention of counsel for the respondent to

2441 make of them self-serving documents, either in fact or legally.

Trial Examiner Purcell: I think you have covered that very well at the outset. You said not only with regard to any testimony that would be put in, but also as to any exhibits that would be later introduced in the record. You may proceed.

By Mr. McBride:

Q. Now, Mr. Coyne, did the Great Atlantic & Pacific Tea Company receive the 15-cent discount throughout the period covered by this tabulation, if you know?

A. Yes, they did.

Q. Is that likewise true of H. G. Hill Stores, Inc., if you know?

A. Yes.

Q. Is that also true with respect to the competitive adjustment of 7½ cents for Capitol Stores?

A. No, it is not.

Q. When did they first receive the adjustment, if you know?

A. In December of 1938.

Q. And is that also true of United Cash Grocery, that is, that the 7½ cents began in December, 1938?

A. Yes.

Trial Examiner Purcell: What was the last question?

2442 (The question above referred to was read by the reporter.)

Trial Examiner Purcell: It shows here December, 1937.

Mr. McBride: If the Examiner please, that represents their purchases for 1937, but the question to the witness was regarding how long the United Groceries had received an adjustment.

Trial Examiner Purcell: I stand corrected.

By Mr. McBride:

Q. Now, with respect to the classification "Discount wholesalers", referring to Goodman & Beer, what sales are included for Goodman & Beer, Mr. Coyne?

A. Those for the city of New Orleans.

Q. Purchases of Goodman & Beer in the city of New Orleans for the Morton Salt Company, is that correct?

A. That is correct.

Q. And what purchases are included with respect to C. D. Kenny Company?

A. Those for New Orleans only.

Q. And no purchases of C. D. Kenny Company from any branch other than in New Orleans are included in this tabulation, is that right?

A. That is right.

Q. What discount, if any, does Goodman & Beer
2443 receive, if you know?

A. No quantity discount.

Q. What do they receive, if anything, other than a quantity discount?

A. They receive a 7½ cents per case competitive allowance through the Consolidated Companies, Inc.

Q. How long was that paid, Mr. Coyne, if you know?

A. Since December, 1938.

Q. Now, with respect to C. D. Kenny Company, what discount, if any, did C. D. Kenny Company receive?

A. 10 cents per case.

Q. And is that a quantity discount?

A. It is.

Q. On what basis?

A. On their qualification as a 5,000-case buyer.

Q. And for how long did C. D. Kenny Company receive that discount?

A. For the entire period.

Q. Do all the discount wholesalers shown under that classification do business in the city of New Orleans?

A. They do.

Q. Are there any wholesalers who purchase the Blue Can from the Morton Salt Company who receive either a quantity discount or a competitive adjustment which do business in the city of New Orleans and are not shown on this schedule?

2444 The Witness: Will you repeat that, please?

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the reporter.)

A. No, there aren't.

By Mr. McBride:

Q. Now, with respect to the next grouping, Mr. Coyne, identified on the exhibit as "Non-discount Wholesalers who testified for Commission", how do you determine the composition of that group?

A. It was determined from the record.

Q. In other words, you examined the record and selected the witnesses and their respective companies in arriving at this classification under the one just referred to, is that correct?

A. That is correct.

Trial Examiner Purcell: When you speak of the record, do you refer to the transcript of the record in this case?

The Witness: I do.

Trial Examiner Purcell: Of the testimony already had?

The Witness: Yes.

By Mr. McBride:

Q. With respect to the Albert Mackie Company, 2445 the Imperial Trading Company, Gerde Newman & Company, and Crescent City Wholesale Company, will you state what purchases of those companies are included in the tabulation?

A. They are purchases in the city of New Orleans.

Q. For the entire period of 1937 to 1941, is that correct?

A. Yes.

Q. Now, with respect to the tabulation for Davis-Mize Company, will you state what sales are included for that customer?

A. Well, Davis-Mize Company, according to the Morton Salt Company records, were succeeded by Witherspoon Brothers in 1940, so that the figures shown would be the purchases of Davis-Mize Company to October, 1940, and those of Witherspoon Brothers thereafter.

Q. Now, with respect to the tabulation for Kohlmann Brothers & Sugarman, will you state what sales are included for that customer?

A. Kohlmann Brothers & Sugarman consolidated with the H. T. Cottam & Company, so that the figures shown are merged for the two companies for the entire period.

Q. So that the tabulation for Kohlmann Brothers & Sugarman includes the sales of the Blue Can by Morton Salt Company to Kohlmann Brothers & Sugarman and H. T. Cottam & Company, both individually prior to the merger, and to the merged company after the merger for the entire period in question, is that right?

2446 A. That is right.

Q. Now, with respect to the classification "Other

non-discount wholesalers", will you state, Mr. Coyne, how the composition of that group was arrived at?

A. Well, that would be all of the other non-discount wholesalers in the city of New Orleans.

Q. And how did you arrive at the names composing that group?

A. Well, anyone that is named as a competitor by witnesses who testified for the Commission are included there.

Q. They are all included in this grouping, is that correct?

A. They are all included in this grouping.

Q. And so far as the records of the Morton Salt Company are concerned, are there any other wholesalers buying Blue Package of the Morton Salt Company in New Orleans and receiving no discount or adjustment, which are not included in the grouping just referred to?

A. No, there wouldn't be.

Q. Now, with respect to each of the customers under the group "Other non-discount wholesalers", will you state what sales to those customers are included in this tabulation?

A. Well, that is their annual net purchases after freight for each year shown in the schedule.

Q. And it includes, with respect to each customer in that grouping, Mr. Coyne, the entire sales of the Morton
2447 Salt Company for the respective years to each of those customers, is that correct?

A. Yes.

Q. Will you state, if you know, Mr. Coyne, whether or not the Davis-Mize Company ever received any discount from the Morton Salt Company, referring now still to Respondent's Exhibit 7-A?

A. They received a discount of 10 cents per case on their purchases of Blue Can prior to the time they were succeeded by Witherspoon Brothers.

Q. Do you know whether or not Witherspoon Brothers received any discount from the Morton Salt Company?

A. They did not receive any discount from the Morton Salt Company.

Q. Did the Davis-Mize Company qualify as a quantity discount purchaser prior to the time that Witherspoon Brothers succeeded it, if you know?

A. Yes.

Q. And what type of a quantity discount customer did they qualify as?

A. They qualified as a 5,000-case purchaser.

Q. Now, referring to Respondent's Exhibit 7-B, will you state, Mr. Coyne, where the total figures for each year, for each class of customers shown on that exhibit, came from?

A. The tabulation of the city of New Orleans billings.

2448 Q. And are those totals the same as the totals shown in the detail on Respondent's Exhibit No. 7-A with respect to each class of customer?

A. They are.

Q. I call your attention now to the respective second columns under each yearly heading, in which certain percentages are shown. Will you explain what those percentages are, Mr. Coyne?

A. Those percentages are the percentage to their 1937 purchases.

Q. Now, by "their", to whom do you refer?

A. To the various groups listed in the first column.

Q. In other words, by that you mean, for example, that 7,313.43, referring to "Total discount retailers" in the first column under 1938 as 120.64 percent of the sales to that same group by the Morton Salt Company for the year 1937, is that correct?

A. That is correct.

Q. And would that also be true, then, with respect to all other percentages shown on the tabulation for the respective years and the respective groups of customers?

A. Yes, it would.

Q. And who made those percentage computations, Mr. Coyne?

A. Well, those were figured in the office on a calculating machine.

2449 Q. Was that done by you or someone under your supervision?

A. It was done by a person under my supervision.

Q. And subject to your direction in preparing this tabulation, is that correct?

A. That is correct.

Q. Now, with respect to both Respondent's Exhibits 7-A and 7-B, there are no dollar signs appearing on the same. Will you state whether or not all the figure tabula-

tions refer to dollars and cents, excepting only the percentage basis?

A. All the figures excepting the percentage figures are dollars and cents.

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit No. 8-A for identification.

(The document referred to was marked "Respondent's Exhibit 8-A" for identification.)

Mr. Haslett: Mr. Examiner, before Mr. McBride goes into another exhibit, are you through with the examination of Mr. Coyne on Exhibits 7-A and 7-B?

Mr. McBride: Yes.

Mr. Haslett: Well, I want to make a motion to strike all the testimony of Mr. Coyne in regard to Respondent's Exhibit 7-A and 7-B on the grounds that it is immaterial.

Trial Examiner Purcell: Is that the only grounds?

Mr. Haslett: Do you want more? Does the Ex-
2450 aminer require more than one ground?

Trial Examiner Purcell: Let the question of counsel stand. I won't answer it. The motion is overruled.

Mr. Haslett: I want to note an exception to the Examiner's ruling and also note an exception to the Examiner's remarks.

Trial Examiner Purcell: The exception will be noted.

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit 8-B for identification.

(The document referred to was marked "Respondent's Exhibit 8-B" for identification.)

By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit 8-A for identification and I ask you to state what it is, if you know.

A. That is a detailed tabulation of the table salt other than Blue Can for the city of New Orleans for the years of 1937 through 1941.

Q. Now, by detailed tabulation of table salt, do you mean the sales of the Morton Salt Company of table salt in the city of New Orleans?

A. I do.

Q. Does that term "table salt", for purposes of this exhibit, include the Blue Can?

2451 A. It does not.

Q. Who prepared this exhibit, Mr. Coyne?

A. This was prepared by our tabulating department, under my supervision.

Q. And from what did the tabulating department prepare the exhibit?

A. From the New Orleans city billings.

Q. Being records of the Morton Salt Company under your jurisdiction, is that correct?

A. That is correct.

Q. And does the tabulation shown on Respondent's Exhibit No. 8-A for identification represent the true and correct figures of the records of the Morton Salt Company in the respect shown by your testimony?

A. They do.

Q. I show you Respondent's Exhibit No. 8-B for identification and ask you to state what that is, if you know.

A. Well, that would be a recapitulation of schedule 8-A.

Q. By "schedule 8-A", you mean Respondent's Exhibit 8-A for identification?

A. Yes, of table salt other than Blue Can for the city of New Orleans for the years of 1937 through 1941 for the various groups shown in column 1.

Q. Then the figures, excepting the percentage figures on Respondent's Exhibit 8-B for identification, were 2452 taken from the total or sub-totals appearing on Respondent's Exhibit 8-A for identification? Is that correct?

A. That is correct.

Mr. McBride: I offer in evidence Respondent's Exhibits 8-A and 8-B for identification.

Mr. Haslett: Mr. Examiner, I don't think I can find words to express the force of my objection to this type of evidence being offered and received in this case. The evidence on Respondent's exhibits 7-A and 7-B and Respondent's Exhibits 8-A and 8-B hasn't any more to do with the issues in this case than the ruling Shelley case.

Does the respondent think the Commission credulous enough to accept this type of evidence as a justification for its price discrimination?

I want to note my objection to this type of testimony and this type of evidence very strenuously on the grounds that it is immaterial to the issues in the case.

Mr. McBride: Mr. Examiner, I can or not clutter up the record with my reasons for offering this in evidence. Having in mind the Examiner's previous ruling on the two

previous exhibits, which, save only for their content, are patterned on the same design, and on which motion or objection of counsel for the Commission was overruled, I can or not state my reasons on the record.

Trial Examiner Purcell: State your reasons on
2453 the record, please. In other words, I would like to have you meet Mr. Haslett's objection.

Mr. McBride: Involved in the Robinson-Patman Act is the question of injury to competition. I do not propose to argue the legal aspects of that, but, in any event, it is a present factor and an ever present issue in any Robinson-Patman Act case, regardless of the form, combination, or substance of pleadings, or anything else.

The record on behalf of the Commission is replete with question after question after question framed in terms of injury to competition or injury to a particular witness' business. Counsel for the Commission got all kinds of answers to those questions.

As part and parcel of showing, among other things, a total absence of injury to competition, I think it is entirely material and relevant to the case that the Morton Salt Company be permitted to show this, and anything else that it can show, to offset any implications on behalf of the Commission that there has been injury to competition. Whether or not these tabulations or any like them prove non-injury to competition is now beside the point. We are arguing only the admissibility in evidence on the grounds of immateriality to the issue.

On that ground I feel that respondent has every rea-
son in the world to submit these tabulations for what-
2454 ever weight they may have with the Commission, for its consideration in the case.

Mr. Haslett: I am certainly glad to hear counsel state the reason or the purpose for the documents. Heretofore I have been in the dark as to what the purpose of the documents was.

Trial Examiner Purcell: Shall we go off the record now?

Mr. Haslett: No, I would like to stay on.

Trial Examiner Purcell: I beg your pardon.

Mr. Haslett: If counsel is offering the documents to show that competition has not been injured as the result of the discriminatory practices, or the alleged discriminatory practices of the respondent, then I have an additional objection, that they are incompetent and irrelevant to the

issues in the case and should not be received in evidence on that basis and on the basis of materiality.

Mr. MeBride: The Examiner heard my explanation.

Trial Examiner Purcell: The content of the exhibits 7-A and 7-B, as well as Exhibits 8-A and 8-B, would seem to the Examiner to mean that all of the various dealers in salt in the city of New Orleans have been listed for various years.

A recapitulation of each exhibit has been prepared, the evident object of which is to show, with 1937 used as
2455 a base, and it is arbitrarily shown as 100 percent, a comparison of the various classes of salt dealers for the years 1938, 1939, 1940, and 1941, and it would seem to show an increase instead of a diminution of business, from which I assume it would be fair for the respondent to argue that competition has not been hurt but, on the other hand, perhaps has been fostered.

Be that as it may, and whatever weight may be accorded to these two exhibits and the succeeding ones to be offered, I am going to admit them in evidence. I think they are material and, after all, what we are concerned with at the present moment is materiality, not weight. I think that a fair concept of the rights of the respondent will entitle it to place before the Commission the contents of these instruments for such value, such probative value, as they may have, and I am going to admit them.

Mr. Haslett: I note an exception to the Examiner's ruling. These documents don't prove or disprove anything, and I would like for the record to show that I reserve my right to present the matter to the Commission before the Examiner's report on these documents.

It is obvious from the face of the documents themselves that they are immaterial and irrelevant to the issues in the case and should not be received.

Trial Examiner Purcell: I cannot concur in that
2456 statement of counsel and so far as counsel desiring to place the matter before the Commission before the report is filed or taking an appeal to the Commission, of course, counsel knows he may do as he is best advised.

In the meantime, the papers are received in evidence.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS NOS. 8-A and 8-B", were received in evidence.)

Trial Examiner Purcell: We will have a five-minute recess.

(A short recess was taken.)

Trial Examiner Purcell: On the record.

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit 9-A" for identification.)

(The document referred to was marked "Respondent's Exhibit 9-A" for identification.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit 9-B, C, and D for identification.

(The documents referred to were marked "Respondent's Exhibits 9-B, 9-C, and 9-D" for identification.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit 9-E for identification.

(The document referred to was marked "Respondent's Exhibit 9-E" for identification.)

2457 Mr. McBride: Is it stipulated, Mr. Haslett, by and between the attorney for the Commission and the attorney for the respondent that Respondent's Exhibit 9-A for identification is a tabulation from the sales records of the Morton Salt Company of its sales of Blue Can to the customers shown on that tabulation in the State of Louisiana, other than in the city of New Orleans, for the years 1937 to 1941, inclusive, and that Respondent's Exhibits Nos. 9-B, C, and D for identification is a tabulation from the sales records of the Morton Salt Company of its sales of the Blue Can for the years 1937 to 1941, inclusive, to Consolidated Companies and to the customers identified as the competitor group and to Interstate Wholesale Groceries for the State of Louisiana, other than in the city of New Orleans, said Respondent's Exhibits Nos. 9-B, C, and D for identification being a detailed tabulation in support of Respondent's Exhibit No. 9-A for identification, and that Respondent's Exhibit 9-E for identification is a tabulation from the sales records of the Morton Salt Company of its sales of the Blue Can for the years 1937 to 1941, inclusive, in the State of Louisiana, exclusive of New Orleans, to the classifications of customers shown on that exhibit, said Respondent's Exhibit No. 9-E for identification being a recapitulation of the tabulations on Respondent's Exhibits Nos. 9-A, B, C, and D for identification?

Mr. Haslett: That is correct.

2458 Mr. McBride: I offer in evidence Respondent's Exhibits Nos. 9-A to 9-E, inclusive.

Mr. Haslett: Objection is made, Mr. Examiner, to the receiving of the documents just offered in evidence, based upon the ground that they are immaterial to the issues of the case.

Trial Examiner Purcell: The objection is overruled and the documents described will be received in evidence and marked by the reporter, respectively, as Respondent's Exhibits 9-A to E, inclusive.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 9-A, 9-B, 9-C, 9-D, and 9-E", were received in evidence.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit 10-A for identification.

(The document referred to was marked "Respondent's Exhibit 10-A" for identification.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibits 10-B, C, and D for identification.

(The documents referred to were marked "Respondent's Exhibits 10-B, 10-C, and 10-D" for identification.)

Mr. McBride: And I ask the reporter to mark this as Respondent's Exhibit 10-E for identification.

(The document referred to was marked "Respondent's Exhibit 10-E" for identification.)

2459 Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibit 10-A for identification is a tabulation from the sales records of the Morton Salt Company of the sales of table salt, exclusive of the Blue Can, during the years 1937 to 1941, inclusive, to the customers shown on that tabulation for the State of Louisiana, exclusive of the city of New Orleans, and that Respondent's Exhibits Nos. 10-B, C, and D for identification is a tabulation from the sales records of the Morton Salt Company of its sales of table salt, exclusive of the Blue Can, for the years 1937 to 1941, inclusive, to Consolidated Companies, to the customers identified as the competitor group, and to Interstate Wholesale Groceries for the State of Louisiana, exclusive of the city of New Orleans, said Respondent's Exhibits Nos. 10-B, C, and D being detailed tabulations in support of Respondents Exhibit No. 10-A for identification and that Respondent's Exhibit No. 10-E for identification is a tabulation of the sales records of the Morton Salt Company of its sales of table salt, exclusive of the Blue Can, for the years 1937

to 1941, inclusive, to the classes of customers shown on said tabulation for the State of Louisiana, exclusive of the city of New Orleans, said Respondent's Exhibit No. 10-E for identification being a recapitulation of the tabulations identified as Respondent's Exhibits 10-A to
2460 10-D, inclusive, for identification?

Mr. Haslett: That is correct, sir.

Mr. McBride: I offer in evidence Respondent's Exhibits Nos. 10-A to 10-E, inclusive.

Mr. Haslett: I object to the receiving of the documents in evidence, Mr. Examiner, and restate my position for the record in relation to that which I took to Respondent's Exhibits 7-A and B, that they are immaterial to the issues of the case.

Trial Examiner Purcell: The objection will be overruled and the documents tendered will be received in evidence and marked by the reporter as Respondent's Exhibits 10-A, B, C, D, and E in evidence.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 10-A, 10-B, 10-C, 10-D, and 10-E", were received in evidence.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibits Nos. 11-A, B, and C for identification.

(The documents referred to were marked "Respondent's Exhibits 11-A, 11-B, and 11-C" for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibits Nos. 11-A, B, and C for identification are tabulations from the sales records of the Morton Salt Company of its sales of the Blue
2461 Can to the customers listed on said Respondent's Exhibits 11-A, B, and C in the States of Georgia and Florida for the years 1937 to 1941, inclusive?

Mr. Haslett: That is correct, sir.

Mr. McBride: I offer in evidence Respondent's Exhibits Nos. 11-A, B, and C for identification.

Mr. Haslett: And I note the same objection.

Trial Examiner Purcell: There will be the same ruling, and the reporter will mark the tendered documents as Respondent's Exhibits 11-A, B, and C in evidence.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 11-A, B, and C", were received in evidence.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibits Nos. 12-A, B, and C for identification.

(The documents referred to were marked "Respondent's Exhibits 12-A, B, and C" for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibits Nos. 12-A, B, and C for identification consist of a tabulation from the sales records of the Morton Salt Company of sales of table salt by that company, exclusive of the Blue Can, to the customers shown on said Respondent's Exhibit 12-A, B, and C for identification in the States of Georgia and Florida
2462 for the years 1937 to 1941, inclusive?

Mr. Haslett: That is correct, sir.

Mr. McBride: I offer in evidence Respondent's Exhibits Nos. 12-A, B, and C.

Mr. Haslett: I note my objection to the receiving of the documents, predicated upon the grounds that the documents are immaterial.

Trial Examiner Purcell: There will be the same ruling and the instruments tendered will be marked by the reporter as Respondent's Exhibits 12-A, B, and C in evidence.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 12-A, B, and C", were received in evidence.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibits 13-A, B, C, D, and E for identification.

(The documents referred to were marked "Respondent's Exhibits 13-A, B, C, D, and E" for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibits Nos. 13-A, B, C, D, and E constitute a tabulation from the sales records of the Morton Salt Company of the sales of the Morton Salt Company of its Blue Can to the customers listed on
2463 Respondent's Exhibits 13-A to E, inclusive, in the States of North Carolina and South Carolina for the years 1937 to 1941, inclusive?

Mr. Haslett: That is correct.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibits Nos. 13-A to 13-E, inclusive.

Mr. Haslett: The same objection.

Trial Examiner Purcell: Same ruling. The reporter

will mark the instruments tendered as Respondent's Exhibits 13-A, B, C, D, and E in evidence.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 13-A, B, C, D, and E", were received in evidence.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibits Nos. 14-A, B, C, and D for identification.

(The documents referred to were marked "Respondent's Exhibits 14-A, B, C, and D" for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibits Nos. 14-A, B, C, and D for identification constitute a tabulation from the sales records of the Morton Salt Company of its sales of table salt, exclusive of sales of the Blue Can, to the customers shown on Respondent's Exhibits 14-A to 14-D for identification in the States of North Carolina and South

2464 Carolina for the years 1937 to 1941, inclusive.

Mr. Haslett: I stipulate as to the identity of the document.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibits 14-A, B, C, and D.

Mr. Haslett: I object to the receiving of the documents in evidence upon the same grounds that I objected to it with the other documents.

Trial Examiner Purcell: Objection overruled, and the tendered documents will be marked by the reporter as Respondent's Exhibits 14-A, B, C, and D in evidence.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 14-A, B, C, and D", were received in evidence.)

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibits Nos. 15-A and 15-B for identification.

(The documents referred to were marked "Respondent's Exhibits Nos. 15-A and 15-B" for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibits 15-A and 15-B for identification constitute a tabulation from the sales records of the Morton Salt Company of sales of the Blue Can and sales of table salt exclusive of the Blue Can, by separate tabulations, for the years 1937 to 1941, inclu-

2465 sive, to all branches, by branches, of the C. D. Kenny Company, located in Florida, Georgia, South Carolina, and North Carolina, and to Thomas & Howard companies at each of the companies or branches, by companies or branches, for the same years and by the same segregated tabulations, located in South Carolina and North Carolina and Georgia and with respect to the same type of tabulation, for the same years, to the two branches of Timberlake Grocery Company, and with respect to the same type of tabulation for the same years for the Christiansburg Canning Company?

Mr. Haslett: It is so stipulated as to the identity of the document.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibits Nos. 15-A and 15-B.

Mr. Haslett: I have the same objection to this document, and the additional objection that it is a repetition of Commission's Exhibits already in the record.

Mr. McBride: May we go off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, I withdraw my objection as to the document being a duplication of one of the Commission's Exhibits and predicate my objection on the ground that it is immaterial to the issues in this case.

2466 Trial Examiner Purcell: The objection will be overruled and the tendered document will be received in evidence and marked by the reporter as Respondent's Exhibits Nos. 15-A and B.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 15-A and 15-B", were received in evidence.)

By Mr. McBride:

Q. Mr. Coyne, I hand you Respondent's Exhibits Nos. 8-A and 8-B. With respect to the A. & P. Tea Company, Mr. Coyne, appearing under the first classification, "Discount Retailers", will you state what figures are included for each of the years in question for that company?

A. That would be the annual net purchases after freight for the years shown.

Q. And for what warehouse of the A. & P. Tea Company do those figures stand?

A. Their New Orleans warehouse.

Q. The New Orleans warehouse of that customer, is that correct?

A. Yes.

Q. And does that include all purchases of the New Orleans warehouse of the A. & P. Tea Company for the years in question?

A. It does.

2467 Q. Now, with respect to Capitol Stores under the same classification, what sales are included for that customer?

A. Those at New Orleans.

Q. Are there any sales for the Capitol Stores at Baton Rouge, Louisiana?

A. No.

Q. With respect to the tabulations for United Cash Grocery, under that same group, what sales are included for that customer?

A. New Orleans only.

Q. Now, with respect to the A. & P. Tea Company, will you state, if you know, what discount, if any, is paid the A. & P. Company for the table salt other than the Blue Can?

A. A quantity discount of one unit, which is approximately 5 per cent of the plant net basis.

Q. And is that the unit paid by reason of the A. & P. Tea Company qualifying as a $50,000 table salt customer?

A. It is.

Q. Of the Morton Salt Company?

A. It is.

Q. Will you state, if you know, what discount, if any, is paid to Capitol Stores on table salt other than the Blue Can?

A. No quantity discount.

2468 Q. And is there any other adjustment or allowance aside from a quantity discount paid to Capitol Stores?

A. There is a one-unit competitive adjustment. That is paid to the Consolidated Companies, Inc.

Q. And that is paid on other table salt, exclusive of the Blue Can, is that correct?

A. Yes.

Q. How long has that been paid, if you know, Mr. Coyne?

A. Since December, 1938.

Q. Now, with respect to United Cash Grocery, will you state, if you know, what discount or allowance, if any, is paid to that customer?

A. There is no quantity discount, but there is a one-unit competitive allowance.

Q. On all table salt items, exclusive of the Blue Can, is that correct?

A. That is correct.

Q. And how long has that been paid, if you know?

A. Since December, 1938.

Q. Now, referring to the totals, Mr. Coyne, shown extended for each of the years for the various classifications, are those totals of the individual amounts shown in each classification?

A. They are.

Q. So that, for example, the figure 862.32 appear-
2469 ing extended under the year 1937 for "Discount Retailers" is the total of the "Discount Retailers", of all discount retailers for 1937, is that correct?

A. That is correct.

Q. And the same would be true of all other totals similarly shown in the tabulation, is that right?

A. That is right.

Q. Will you state why the sales of the Capitol Stores and United Cash Grocery were included under the classification "Discount Retailers" in this tabulation?

A. Well, they are the retail outlets in New Orleans.

Q. Were they included for comparison purposes by reason of the competitive allowance?

A. They were.

Q. And do all of the customers appearing under "Discount Retailers" do business in the city of New Orleans?

A. They do.

Q. Are there any retailers in the city of New Orleans buying table salt from the Morton Salt Company other than the Blue Can which receive a quantity discount or a competitive adjustment and which are not shown under the classification "Discount Retailers" on this exhibit?

A. No.

Mr. Haslett: Mr. McBride, will you have the question reread for me, please? I missed it.

2470 Mr. McBride: Read the question, please.

(The record was read by the reporter.)

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. Now, with respect to the second classification, "Discount Wholesalers", Mr. Coyne, will you describe what sales of C. D. Kenny Company are included in Respondent's Exhibit No. 8-A?

A. Those of their New Orleans branch only.

Q. And what purchases of Goodman & Beer are included in the tabulation?

A. New Orleans only.

Q. Will you state, Mr. Coyne, if you know, what quantity discount was paid C. D. Kenny Company?

A. They receive a one-unit quantity discount on their qualification as a $50,000 buyer.

Q. You are referring now to table salt other than the Blue Can, is that correct?

A. That is correct.

Q. And how long was that quantity discount paid, in so far as the tabulation in question is concerned?

A. It covered the entire period.

Q. Now, with respect to Goodman & Beer, will
2471 you state, if you know, what discount, if any, was paid that company?

A. No quantity discount.

Q. Was there any allowance or adjustment paid otherwise to Goodman & Beer?

A. Yes, there was a competitive allowance of one unit.

Q. And how long was that paid, Mr. Coyne, if you know?

A. Since December, 1938.

Q. Will you state why Goodman & Beer were included under the classification "Discount Wholesalers" on this tabulation?

A. I don't quite understand that question.

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the reporter.)

A. Well, for comparative purposes only.

Trial Examiner Purcell: Let me ask a question.

By Trial Examiner Purcell:

Q. Mr. Coyne, how did you determine by looking at Respondent's Exhibit 8-A that the competitive discount

or adjustment was made to Goodman & Beer beginning in December, 1938? Do you know that of your own knowledge or is that reflected by the instrument itself in any way?

A. It is not reflected by the instrument itself.

Q. Then you have independent knowledge?

A. I do on that.

2472 Q. And that would be true of the same statement that you made as to Respondent's Exhibits 7-A and B with regard to another purchaser who was receiving an identical adjustment or discount?

A. That would be right.

By Mr. McBride:

Q. Now, Mr. Coyne, with respect to the classification "Non-discount wholesalers who testified for Commission", will you state how the composition of that particular classification was arrived at?

A. Examination of the record.

Q. And from your examination of the record you found that representatives or officials of all the customers listed under that grouping had testified on behalf of the Commission in this case, is that correct?

A. That is correct.

Q. Referring now, under that same classification, to Albert Mackie Company, Inc., Imperial Trading Company, Gerde Newman & Company, and Crescent City Wholesale Company, will you state what sales of those four companies were included, respectively, for this tabulation?

A. Those in the city of New Orleans only.

Q. For each of the years in question?

A. Yes.

Q. Now, with respect to Davis-Mize & Company,
2473 will you state what sales are included for that company?

A. Well, that would be for Davis-Mize Company, up to the time they were succeeded by Witherspoon Brothers, and Witherspon Brothers thereafter.

Q. So that for the years 1937 to 1941, you show the continuous purchases of Davis-Mize & Company up to the time they were taken over by Witherspoon Brothers, and thereafter those of Witherspoon Brothers?

A. That is correct.

Q. Now, the same question with respect to Kohlmann Brothers & Sugarman.

A. Kohlmann Brothers & Sugarman, that would include the merged figures for them and H. T. Cottam & Company.

Q. In other words, your tabulations on Kohlmann Brothers & Sugarman, that is, the method was the same with respect to table salt, other than the Blue Can, as it was for the Blue Can to which you testified on Respondent's Exhibit 7-A, is that correct?

A. That is correct.

Q. Now, with respect to the classification "Other non-discount wholesalers", will you state how the composition of that group was arrived at?

A. Well, that would be all of the other non-discount wholesalers who purchased from the Morton Salt Company, and it would include any other non-discount whole-
2474 salers who were named as competitors by the various witnesses who testified for the Commission.

Q. And how did you determine, Mr. Coyne, as to what other competitors were named by witnesses for the Commission?

A. From examination of the record.

Q. In this particular case?

A. That is right.

Mr. Haslett: May we be off the record a moment?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. Mr. Coyne, are there any wholesalers purchasing table salt other than the Blue Can from the Morton Salt Company in the city of New Orleans who receive a discount or an adjustment of any sort, which are not included under the grouping "Discount Wholesalers" on this tabulation?

A. No.

Q. Are there any wholesalers buying table salt from the Morton Salt Company other than the Blue Can and who receive no discount and who are not included under the grouping "Non-discount wholesalers who testified for the Commission" or the grouping "Other non-discount wholesalers", insofar as the city of New Orleans is concerned?

A. No, they are all included.

2475 Q. Now, with respect to Manson Brothers and Charles Dennery, Inc., it appears from the tabulations that neither of those companies purchased table

salt other than the Blue Can from the Morton Salt Company.

Will you state why those two companies were included in this stipulation?

A. Well, they were named as competitors by witnesses and they were included in here. Now, they may have purchased other types of salt from us, but not table salt.

Q. Now, referring to Respondent's Exhibit No. 8-B, Mr. Coyne, do the figures in the respective first columns of each of the pairs of columns appearing on that tabulation represent the totals for the various classes taken from Respondent's Exhibit No. 8-A?

A. They are the same.

Q. So that, for example, the figure 868.32 under 1937 for "Total Discount Retailers" appears as the extended total for the same year for that group on Respondent's Exhibit 8-A, is that correct?

A. That is correct.

Q. And that would likewise be true of all figures for each group for each year on Respondent's Exhibit 8-B?

A. That is correct.

Q. Now, there appears on Respondent's Exhibit 8-B a column of percentage figures for each of the years 2476 in question, being 1937, 1938, 1939, 1940, and 1941.

Will you describe what those percentage figures are?

A. Well, they are the percentage to their 1937 purchases.

Q. In other words, using, for example, the year 1938, with respect to "Total Discount Retailers", the figure 900.49 is 103.70 per cent of the amount of sales to total discount retailers for the years 1937, is that correct?

A. That is correct.

Q. And that would likewise be true with respect to the percentages for each group, for each year appearing on the tabulation?

A. Yes.

Q. Who prepared the percentages in question, Mr. Coyne?

A. Well, they were figured on a calculating machine by one of the girls under my supervision in the office.

Q. And did she do it at your direction for the purposes of this exhibit?

A. Yes.

Q. With respect to all the figures appearing on Respondent's Exhibits 8-A and 8-B, exclusive only of the percentage figures, do those figures represent net sales after freight in each instance, Mr. Coyne?

A. They do.

Q. Neither the figures in Respondent's Exhibits
2477 8-A and B nor in Respondent's Exhibits 7-A and 7-B, to which you previously testified, show any adjustments for allowance for returns and allowances or for discounts paid, is that correct?

A. That is correct.

Mr. Haslett: You say they don't, or do?

Mr. McBride: They do not.

2478 Room 116, Sherman Hotel,
Chicago, Illinois,
Thursday, October 8, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

2479 Mr. Arnold J. Coyne resumes the stand for the respondent on direct examination by the respondent.

ARNOLD J. COYNE resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. McBride.

Q. Mr. Coyne, I now show you Respondent's Exhibits 9-A to 9-E, inclusive. Referring to the A. & P. Tea Company, being the first customer under the heading "Discount Retailers" on Respondent's Exhibit 9-A, will you state what figures are included for each of the years in question as to that customer?

A. Those are the annual net purchases of the Great Atlantic & Pacific Tea Company's New Orleans warehouse.

Q. Of the Blue Can?

A. Of the Blue Can.

Q. Referring now to Respondent's Exhibit 7-A and to the figures appearing thereon for the Great Atlantic & Pacific Tea Company, will you state whether or not the figures for that customer for each of the respective
2480 years on those two schedules are the same?

A. They are the same.

Q. Will you state the reason for showing the tabulations the same in both of those exhibits, Mr. Coyne?

A. Because the purchases for the New Orleans warehouse cover the entire state of Louisiana.

Q. Including the city of New Orleans?

A. Including the city of New Orleans.

Q. Does the Morton Salt Company have any way of knowing the distribution of the Great Atlantic & Pacific Tea Company of its Blue Can purchases made to its New Orleans warehouse, between the city of New Orleans and the rest of the State of Louisiana?

A. We have no way of knowing.

Q. Then, for that reason, the entire New Orleans warehouse purchases of the Great Atlantic & Pacific Tea Company are shown on both of those tabulations, is that correct?

A. That is correct.

Q. Now, referring to Capitol Stores, under "Discount Retailers" on Respondent's Exhibit 9-A, will you state what sales are included for each of the years in question for that customer?

A. That would be for Baton Rouge only.

Q. Are there any sales included on Respondent's Exhibit 9-A for Capitol Stores with respect to sales
2481 made to that customer at New Orleans?

A. No, there is not.

Q. What discount, if any, is paid to the A. & P. Tea Company?

A. 15 cents per case.

Q. And is that a quantity discount?

A. It is.

Q. Based on what qualification?

A. Their qualification is a 50,000-case buyer in a twelve consecutive months' period.

Q. And for how long was the Great Atlantic & Pacific Tea Company receiving that discount?

A. During this entire period.

Q. By "this entire period", you mean that shown on Respondent's Exhibit 9-A, is that correct?

A. I do.

Q. What discount, if any, was Capitol Stores receiving?

A. No quantity discount.

Q. Were they receiving any other allowance or adjustment?

A. They receive a 7½ cents per case allowance through the Consolidated Companies, Inc.

Q. And how long has that been allowed?

A. Since December of 1938.

Q. Now, do both of the discount retailers shown do business in the State of Louisiana outside of the city of New Orleans?

2482 A. They do.

Trial Examiner Purcell: Now, may the Examiner request of the witness if that is something else, as occurred yesterday, which the witness knows of his own knowledge but which does not appear on the exhibit?

The Witness: That is correct.

Trial Examiner Purcell: In other words, you did not testify to it, but is that 7½ cents allowed Capitol Stores a competitive adjustment?

The Witness: It is a competitive adjustment.

Trial Examiner Purcell: So that is it a fact that all competitive adjustments were instituted by Morton Salt Company in December of 1938?

The Witness: With respect to Consolidated Companies, Incorporated.

Trial Examiner Purcell: Because your answer to similar questions has always been in December, 1938. Do you use that as a base point on the allowance of competitive allowances?

The Witness: No, that would—

Trial Examiner Purcell: All right, the answer is sufficient.

Mr. McBride: May I inquire, for clarity, Mr. Examiner, whether you referred in your question about base point, to Consolidated Companies and their affiliates only,

2483 or to all competitive adjustments?

Trial Examiner Purcell: To all competitive adjustments.

Mr. McBride: Then the answer would be correct.

By Mr. McBride:

Q. For the Examiner's further information, Mr. Coyne, can we use December, 1938, as the beginning point of all competitive adjustments paid to Consolidated Companies, Inc., at Plaquemine, Louisiana or any of its affiliates?

A. We can.

Q. And its affiliates would include Capitol Stores at both Baton Rouge and New Orleans, Louisiana, and United Cash Grocery at New Orleans, Louisiana, is that correct?

A. That is correct.

Mr. McBride: Does that clarify the point, Mr. Examiner?

Trial Examiner Purcell: Yes, sir.

By Mr. McBride:

Q. Mr. Coyne, are there any retail customers of the Morton Salt Company doing business in the State of Louisiana who receive any quantity discount or who receive any competitive adjustment whose names do not appear under the classification "Discount Retailers" on Respondent's Exhibit 9-A?

A. No, they are all shown.

Q. Now, with respect to "Discount Wholesalers" 2484 on Respondent's Exhibit 9-A, will you state what sales are shown for Consolidated Companies, being the customer appearing under that classification?

A. Well, that would be all of the branches of the Consolidated, excluding Goodman & Beer at New Orleans.

Q. Do the figures for Consolidated Companies include any figures or tabulations for Capitol Stores at either Baton Rouge or New Orleans, Louisiana, or for United Cash Grocery?

A. They do not.

Q. So that the figures there include only sales by Morton Salt Company to the wholesale branches or houses of Consolidated Companies in the State of Louisiana, exclusive of Goodman & Beer in New Orleans, is that correct?

A. That is correct.

Q. Mr. Coyne, are there any other wholesale customers of the Morton Salt Company doing business in the State of Louisiana, exclusive of the city of New Orleans, who re-

ceive any quantity discount or any competitive adjustment whose names do not appear under the classification "Discount Wholesalers" on Respondent's Exhibit 9-A?

A. No.

Q. Now, with respect to the classification "Non-discount wholesalers who testified for Commission", on that same exhibit, will you state how the composition of the customer list under that grouping was arrived at?

2485 A. That was from an examination of the record of those who testified and it was listed here.

Trial Examiner Purcell: Might the Examiner say to the witness that when he refers to "record", in order to make it straight, it would be better that he refer to the transcript of record in this case. Otherwise, it may be confused with your own records, if that is what you mean, sir.

The Witness: That is what I mean.

Trial Examiner Purcell: Very well.

By Mr. McBride:

Q. And are all the sales of the Blue Package from Morton Salt Company to Interstate Wholesale Groceries, Inc., included in the tabulation on Respondent's Exhibit No. 9-A?

A. They are.

Q. Now, with respect to the final grouping on that exhibit, "Other non-discount wholesalers", there appears thereunder the words "Competitor group."

Will you describe what is meant by those words?

A. Well, in my examination of the transcript of the record, we included in that group all who are named by any witnesses for the Commission as competitors.

Q. That is simply a group description, then, of all other wholesalers doing business in the State of Louisiana, outside of New Orleans, who are identified by witnesses

2486 for the Commission as their competitors, is that correct?

A. That is correct.

Q. And the figures, then, for the competitor group on Respondent's Exhibit 9-A for each of those years represents the total sales of the Blue Can to that group for each of those years, is that correct?

A. That is correct.

Q. Now, referring to Respondent's Exhibit 9-B, will you state how the composition of the names under the heading "Consolidated Companies" was arrived at?

A. That is all of the branches of the Consolidated Companies, Inc., excluding Goodman & Beer in New Orleans.

Q. And then the tabulations represent the sales by years of each of those branches, is that correct?

A. That is correct.

Q. Now, are the totals for each of the various years on Respondent's Exhibit 9-B the same as those shown for Consolidated Companies under the classification "Discount Wholesalers" on Respondent's Exhibit 9-A?

A. They are the same.

Q. Referring now to Exhibit 9-C, is that a detailed tabulation of the "Competitor Group" to which you testified about on Respondent's Exhibit 9-A?

A. It is.

Q. And that tabulation is carried forward onto
2487 Respondent's Exhibit 9-D, is that correct?

A. That is correct.

Q. Now, referring to the tabulation on Interstate Wholesale Groceries, Mr. Coyne, on Respondent's Exhibit 9-D, will you state how the composition of the names under the grouping was arrived at?

A. Well, those are the five branches of the Interstate Wholesale Groceries referred to in the transcript of the record.

Q. In this case, transcript of the record in this case?

A. In this case, yes.

Q. And are the totals for that tabulation for Interstate Wholesale Groceries on Respondent's Exhibit 9-D the same as appear for Interstate Wholesale Groceries, Inc., on Respondent's Exhibit 9-A?

A. They are.

Q. Now, referring to Respondent's Exhibit 9-E, does that tabulation represent a recapitulation of Respondent's Exhibits Nos. 9-A, B, C, and D?

A. It does.

Q. With respect to the percentages appearing thereon, will you explain what those percentages are, referring now to Respondent's Exhibit 9-E?

A. Those percentages are the percentages of their purchases for each year, 1938 to 1941, to their 1937 purchases.

2488 Q. The percentages are worked out for each class of customers as shown on Respondent's Exhibit 9-E?

A. Yes.

Q. And 1937 is used as the base year, is that correct?

A. That is correct.

Q. Did you make those percentage calculations?

A. They were made by a calculating operator under my supervision.

Q. And for the purpose of preparing this exhibit, is that correct?

A. That is correct.

Q. Mr. Coyne, I show you Respondent's Exhibits 10-A to 10-E, inclusive.

Referring now to Respondent's Exhibit 10-A, Mr. Coyne, will you state what figures are used for the A. & P. Tea Company, appearing under the grouping "Discount Retailers"?

A. Those are the figures of the purchases of the New Orleans warehouse of the Great Atlantic & Pacific Tea Company.

Q. Are the figures appearing on Respondent's Exhibit 10-A with respect to the Great Atlantic & Pacific Tea Company the same as for that company on Respondent's Exhibit 8-A?

A. They are.

Q. And would your testimony be the same, Mr. 2489 Coyne, as to the reasons for the identity of those figures on those two schedules, would it be the same as it was with respect to the identity of the Blue Can figures on Respondent's Exhibits 7-A and 9-A?

A. It would be the same.

Q. Referring now to Capitol Stores on Respondent's Exhibit 10-A, what purchases are reflected on that tabulation?

A. Purchase of the Baton Rouge branch at Baton Rouge.

Q. No purchases of Capitol Stores at New Orleans are included, is that correct?

A. That is correct.

Q. What discount is paid A. & P. Tea Company, if you know?

A. One unit discount.

Q. On a quantity discount?

A. That is a quantity discount.

Q. Is that paid for the entire period shown by this exhibit?

A. It was.

Q. What discount, if any, was paid Capitol Stores, if you know?

A. No quantity discount; a one unit competitive allowance.

Q. For what period was that paid?

A. Since December, 1938.

Q. Are there any retail customers of the Morton Salt Company doing business in the State of Louisiana
2490 who purchase table salt other than the Blue Can and who receive a quantity discount or competitive adjustment whose names do not appear under the grouping "Discount Retailers" on this exhibit?

A. No.

Q. Referring now to "Discount Wholesalers" on the same exhibit, will you state what figures of Consolidated Companies were used in that tabulation?

A. All branches of the Consolidated Companies, excluding Goodman & Beer in New Orleans.

Q. Are there any figures included for Consolidated Companies, insofar as Capitol Stores are concerned, or United Cash Grocery?

A. No, there is not.

Q. Now, what discount, if any, is paid Consolidated Companies, if you know?

A. No quantity discount. One unit competitive allowance.

Q. That was also paid from December, 1938, on?

A. It was.

Q. Referring now to "Non-discount wholesalers who testified for Commission", how did you determine what wholesalers had testified for the Commission?

A. From the transcript of the record in this case.

Q. And are all the purchases of Interstate Wholesale Groceries, Inc., included in this tabulation?

2491 A. They are.

Q. Referring now to the term "Competitor Group" under the classification "Other non-discount wholesalers", would your testimony as to the tabulations and the composition of that group be the same as it was with respect to the term in Respondent's Exhibit 9-A?

A. Yes, it would be.

Q. Referring to Respondent's Exhibit 10-B, are the totals for the respective years on that exhibit carried forward as the totals of Consolidated Companies where it appears on Respondent's Exhibit 10-A?

A. Yes, they are.

Q. Referring now to Respondent's Exhibit 10-D, are the

totals for the respective years appearing thereon with respect to the "Competitor Group" carried forward as the totals for that group on Respondent's Exhibit 10-A?

A. Yes, they are.

Q. And again referring to Respondent's Exhibit 10-D, are the totals for the respective years of Interstate Wholesale Groceries carried forward as the total for that company where it appears on Respondent's Exhibit 10-A?

A. Yes, they are.

Q. Would your testimony, Mr. Coyne, be the same as to the composition of the "Competitor Group" and as to the branches of Consolidated Companies and as to the

2492 branches of Interstate Wholesale Groceries with respect to Respondent's Exhibits 10-B, C, and D as it was with respect to those same customers in connection with Respondent's Exhibits 9-B, C, and D?

A. Yes, it would be.

Q. Is Respondent's Exhibit 10-E a recapitulation of Respondent's Exhibits 10-A, B, C, and D?

A. Yes, it is.

Q. And do the percentages on Respondent's Exhibit 10-E represent the same thing and were they computed in the same manner as you testified regarding the percentages appearing on Respondent's Exhibit 9-E?

A. Yes.

Q. Mr. Coyne, I show you Respondent's Exhibits 11-A, B, and C. Referring, Mr. Coyne, to Respondent's Exhibit 11-A and to Great Atlantic & Pacific Tea Company, under the classification "Discount Retailers", will you state what figures are included for that customer?

A. Their annual net purchases after freight for the years of 1937 through 1941 for their Jacksonville, Tampa, and Miami warehouses.

Q. You are referring now to Jacksonville, Florida, Tampa, Florida, and Miami, Florida, is that correct?

A. I am.

Q. No other sales to the Great Atlantic & Pacific

2493 Tea Company are included in those tabulations?

A. No.

Q. Now, referring to Colonial Stores, Inc., under the same exhibit and under the same classification, will you state what sales to that company are included?

A. The Atlanta division only.

Q. By "the Atlanta division", do you mean their purchasing office at Atlanta, Georgia?

A. I do.

Q. And all other purchasing offices of the Colonial Stores, Inc., are excluded from this tabulation, is that correct?

A. That is correct.

Q. Does Colonial Stores, Inc., buy Morton's Blue Can in any point in Georgia and Florida except Atlanta, Georgia?

A. That is the only purchasing point in Georgia and Florida.

Q. Does the Great Atlantic & Pacific Tea Company purchase Blue Can from the Morton Salt Company at any point or points in Georgia or Florida except Jacksonville, Tampa, and Miami?

A. Those are the only three.

Q. With respect to Margaret Ann Super Markets, are all the purchases of that company included?

A. Yes, they are.

Q. Now, referring to the note, "Successor to Southern Food Stores", did you include the purchases of
2494 Southern Food Stores for so long as Margaret Ann Super Markets was known under that name?

A. Yes.

Q. With respect to Kroger Grocery & Baking Company on the same exhibit, will you state what purchases of that company are included?

A. Piggly Wiggly branch at Atlanta, Georgia.

Q. Are there any other Kroger Grocery & Baking Company purchasing points so far as purchases of the Blue Can from Morton Salt Company are concerned in either Georgia or Florida except the one in Atlanta, Georgia, shown here?

A. Atlanta, Georgia, is the only one.

Q. Will you state what sales are included with respect to Winn & Lovett Grocery Company?

A. That would include purchases for Winn & Lovett, Economy Wholesale Company, Hagin-Peters, and The Table Supply Stores.

Q. Taking them one at a time, Mr. Coyne, why did you include in this tabulation purchases of Economy Wholesale Company?

A. Because, according to the transcript of the record, they purchased some of their Blue Can items through the Winn & Lovett Company.

Q. So that there is included in the Winn & Lovett Gro-

cery Company tabulation all sales by the Morton Salt
2495 Company direct to Economy Wholesale Company made at any time during the period in question, is that correct?

A. That is correct.

Q. Now, will you explain why Hagin-Peters Company was included with the Winn & Lovett Grocery Company tabulation?

A. Well, that would be the same answer: According to the transcript of the record in this case they, too, purchased their Blue Can through the Winn & Lovett Grocery Company.

Q. So that any direct sales made by Morton Salt Company to Hagin-Peters Company at any time during the period in question are included in the Winn & Lovett tabulation, is that right?

A. That is right.

Q. And will you explain why Table Supply Company was included here?

A. Well, Table Supply Company is a retail outlet and it is an affiliate of the Winn & Lovett Company.

Q. And you say it is an affiliate? Does it show that way in the record with the Morton Salt Company?

A. Yes, it does.

Q. Now, with respect to Atlanta Quality Saving Stores, is that a member or a unit of the National Retailer Owned Grocers, if you know?

A. It is. It is their wholesale outlet at Atlanta.

Q. Are all the purchases by that unit in Atlanta
2496 are included in this tabulation?

A. They are.

Q. Are there any other N. R. O. G. units or members in either Georgia or Florida that purchase the Blue Can from Morton Salt Company?

A. No.

Q. You have previously testified that the Great Atlantic & Pacific Tea Company receives a 15-cent quantity discount on the Blue Can; that is correct, is it not?

A. It is.

Q. Can you state what discounts, if any, are paid Colonial Stores and Margaret Ann Super Markets?

A. 10 cents per case.

Q. And how long did Colonial Stores receive the 10 cents per case discount?

A. During the entire period covered by this exhibit.

Q. Is that also true of Margaret Ann Super Markets?

A. It is.

Q. What discount is received by Kroger Grocery & Baking Company?

A. Well, they now receive 15 cents per case, but that has only been since January of 1941.

Q. And when they received that, was that with respect to purchases made during the calendar year 1940?

A. It was.

2497 Q. Prior to that what discount, if any, did they receive?

A. 10 cents per case.

Q. And that is the quantity discount on a 5,000-case buyer, is that correct?

A. That is correct.

Q. And did the Atlanta Quality Saving Stores receive a quantity discount of 10 cents per case for the entire period shown here?

A. Yes, they did.

Q. Are there any retail customers of the Morton Salt Company, insofar as Blue Can purchases are concerned, in the States of either Georgia or Florida who receive a quantity discount and whose names do not appear under the classification "Discount Retailers" on Respondent's Exhibit 11-A?

A. No, they are all shown.

Mr. Haslett: May we be off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Does counsel wish to clear up a misstatement of the witness?

Mr. McBride: I thought I would, Mr. Examiner.

By Mr. McBride:

Q. Mr. Coyne, you testified just a moment ago that the Margaret Ann Super Markets had received a quantity

2498 discount of 10 cents throughout the period 1937 to 1941, shown on Respondent's Exhibit 11-A, is that correct?

A. Yes.

Q. Now I show you Commission's Exhibit 182-B, which I believe you testified to as having prepared the same, and I ask you to examine the same and then state whether or

not you wish to correct your testimony regarding the quantity discount to Margaret Ann Super Markets.

A. I would like to correct my statement in that regard, that they did not qualify until January of 1940.

Q. So that on the tabulation, being Respondent's Exhibit 11-A, Margaret Ann Super Markets did not qualify for or receive a quantity discount at any time prior to January, 1940, is that correct?

A. That is correct.

Mr. Haslett: May we have a short recess, Mr. Examiner?

Trial Examiner Purcell: Recess for five minutes.

(A short recess was taken.)

Trial Examiner Purcell: The hearing is in order. Have you finished with 11-A, B, and C, Mr. McBride?

Mr. McBride: Not as yet.

By Mr. McBride:

Q. Now, Mr. Coyne, referring to the next classification on Respondent's Exhibit 11-A, being "Non-discount
2499 retailers who testified for Commission", how was the composition of that group determined?

A. From an examination of the transcript of the record of this case.

Q. Now, under that same classification on the same exhibit are all the sales to Roundtree Grocery Company included?

A. They are.

Q. And what additional sales are included, insofar as Roundtree Grocery Company are concerned?

A. South Georgia Grocery Company and Capital City Grocery Company.

Q. Does it appear in the transcript of the record in this case that the last two named companies are affiliates of or subsidiaries of Roundtree Grocery Company?

A. It does.

Q. And is that the reason for the inclusion under the tabulations for Roundtree Grocery Company?

A. It is.

Q. Now, with respect to the remaining companies under that group, Daylight Grocery Company, Setzers Stores, Mulberry Market, Alterman Brothers, and B. & B. Cash Grocery Stores, are all the sales to those respective customers included in the tabulation under the heading "Non-discount retailers who testified for Commission"?

A. They are.

2500 Q. And do those customers whom I have just named in my previous question, do they do both a wholesale and a retail business?

A. They do.

Q. But the total sales of the Blue Can of the Morton Salt Company to each of those five customers are included in the tabulation for those stores under "Non-discount retailers who testified for the Commission", is that right?

A. That is correct.

Q. Now, under the classification "Discount Wholesalers" on the same exhibit, are the same sales included with respect to Winn & Lovett Grocery Company which appears as the first customer thereunder, as are shown for Winn & Lovett Grocery Company under the classification "Discount Retailers"?

A. They are the same.

Q. Now, with respect to the Timberlake Grocery Company, under "Discount Wholesalers", what sales are included for the tabulation of that customer?

A. Their Thomasville and Macon, Georgia, houses.

Q. With respect to C. D. Kenny Company under that same classification on the same exhibit, what sales are included with respect to that customer?

A. All of their Georgia and Florida houses.

Q. With respect to Bryan-Keefe Company, what sales are included for that company?

2501 A. That includes all of theirs and branches, that is, the Bryan-Keefe & Adams Company, Ft. Myers, Florida, Victory Grocery Company, Lakeland, Florida, and the Tropical Grocery Company of St. Petersburg, Florida, until the Tropical Grocery Company was sold in 1941.

Q. With respect, now, to the Florida Wholesale Grocery Company, under the same classification in the same exhibit, what sales of the Morton Salt Company are in that tabulation?

A. There is Dade Wholesale Cash & Carry Company and the National Brands, Inc.

Q. In other words, all sales of the Morton Salt Company to Florida Wholesale Grocery Company, Dade Wholesale Cash & Carry Company, and National Brands, Inc., are included under Florida Wholesale Company on that exhibit, is that correct? Rather, Florida Wholesale Grocery Company?

A. That is correct.

Q. Will you explain the reason for making that inclusion?

A. Because during part of the period covered, Dade Wholesale Cash & Carry Company and the National Brands, Inc., purchased their Blue Can through the Florida Wholesale Grocery Company or from the Florida Wholesale Grocery Company, I should say.

Q. With regard to Hill Brothers, Inc., under the same classification on the same exhibit, what sales are in-
2502 cluded to that company?

A. The purchases of their Miami and West Palm Beach, Florida, houses.

Q. And what were included with regard to Chitty & Company?

A. Their Miami and Jacksonville, Florida, houses.

Q. Are there any discount wholesalers, Mr. Coyne, who are customers of the Morton Salt Company, insofar as the Blue Can is concerned, in either the States of Georgia and Florida, who receive a quantity discount, who are not included under the classification "Discount Wholesalers" on Respondent's Exhibit No. 11-A?

A. No, they are all included.

Q. Now, with respect to Respondent's Exhibit 11-B, will you state how the composition was arrived at for the classification "Non-discount wholesalers who testified for Commission"?

A. From an examination of the transcript of the record in this case, and all those who testified as witnesses for the Commission were included.

Q. Now, referring to B. & B. Cash Grocery Stores, Daylight Grocery Company, Setzers Stores, Alterman Brothers, and Mulberry Market, appearing under the classification "Non-discount wholesalers who testified for Commission", are the tabulations of the purchases by those customers the same as the tabulations for those same customers
2503 where they appear under the classification "Non-discount Retailers who testified for the Commission" on Respondent's Exhibit 11-A?

A. They are the same.

Q. With respect to all other customers under the classification "Non-discount Wholesalers who testified for the Commission", are all the purchases of each of those other customers shown on Respondent's Exhibit 11-B for the respective years in question?

A. They are all shown.

Q. Referring again to Respondent's Exhibit 11-B and to the classification "Other non-discount wholesalers", will you state how the composition of that grouping was arrived at, referring also to the continuation of that classification onto Respondent's Exhibit 11-C?

A. That grouping would be all of the other non-discount wholesalers in the States of Georgia and Florida who did not testify for the Commission in this case and who were named as competitors by any witness for the Commission.

Q. And with respect to each of the customers in the last group or classification referred to, are all the sales to those customers for the years in question shown on Respondent's Exhibits 11-B and 11-C?

A. All of their purchases are shown.

Q. Were the precentage figures shown on Respondent's Exhibits 11-A, 11-B and 11-C computed in the same
2504 manner and under your supervision, in the same way as you have testified to with regard to percentages appearing on any of Respondent's Exhibits 7-A to 10-E, inclusive?

A. They were.

Q. Mr. Coyne, I now show you Respondent's Exhibits 12-A, B, and C. Referring, first, to the customers appearing under the classification "Discount Retailers" on Respondent's Exhibit 12-A, would your testimony be the same as to the sales included, insofar as table salt other than the Blue Can is concerned, for each of those customers as you testified to with respect to the sales of the Blue Can for those customers where they appear on Respondent's Exhibit 11-A?

A. Yes, it would be the same.

Mr. Haslett: Mr. Examiner, I want the record to be very clear that I have a continuing objection to all this line of testimony in regard to these various documents.

Trial Examiner Purcell: Yes, Mr. Haslett.

Mr. McBride: I assume, Mr. Examiner, that the continuing objection is based on the grounds of immateriality previously expressed, is that correct?

Mr. Haslett: That is correct, sir.

By Mr. McBride:

Q. Mr. Coyne, are there any retail customers of the Morton Salt Company, insofar as table salt other than the Blue Can is concerned, doing business in either the

2505 States of Georgia or Florida and who receive any discount or competitive adjustment, which are not shown on Respondent's Exhibit 12-A under the heading "Discount Retailers"?

A. No.

Q. What discount, if any, is paid Colonial Stores, Inc.?

A. There is no quantity discount paid to the Colonial Stores, Inc.

Q. Is there an adjustment or allowance of any kind paid to the Colonial Stores, Inc., referring now to table salt other that the Blue Can?

A. There is a competitive allowance of one unit paid to the Colonial Stores, Inc.

Q. And when was that first paid, if you know, Mr. Coyne?

A. In July of 1941.

Q. With respect to the Great Atlantic & Pacific Tea Company, Kroger Grocery & Baking Company, and Atlantic Quality Saving Stores, each of those three customers received the one unit quantity discount for the entire period covered by this exhibit, is that correct?

A. That is correct.

Q. Referring now to Roundtree Grocery Company, under the classification "Non-discount Retailers who testified for the Commission", were the sales of table salt other than the Blue Can to South Georgia Grocery Company and Capitol City Grocery Company included in that tabulation?

2506 A. Yes.

Q. Now, with respect to Daylight Grocery Company, Setzers Stores, Mulberry Market, Alterman Brothers, B. & B. Cash Grocery Stores, and Winn & Lovett Grocery Company, appearing under the classification "Non-discount Retailers who testified for the Commission", were all the sales of each of those customers included in the tabulations under that classification?

A. Yes, they were.

Q. And does the tabulation for Winn & Lovett Grocery Company include Hagin-Peters Company, Economy Wholesale Grocery, and Table Supply Stores on the same basis as you testified to with respect to Respondent's Exhibit No. 11-A?

A. Yes, it would be the same.

Q. You determined the composition of that classifica-

tion, "Non-discount Retailers who testified for the Commission", from the transcript of the record in this case, is that correct?

A. That is correct.

Q. Now, referring to the classification "Discount Wholesalers" on Respondent's Exhibit 12-A, what sales were included for C. D. Kenny Company?

A. All their Georgia and Florida houses.

Q. And what sales were included for Timberlake Grocery Company?

2507 A. Thomasville, Georgia, and Macon, Georgia, houses.

Q. Does C. D. Kenny Company receive a quantity discount of one unit on other table salt aside from the Blue Can?

A. They do.

Q. And what discount, if any, does the Timberlake Grocery Company receive?

A. They receive no quantity discount.

Q. They receive a competitive adjustment?

A. They do.

Q. In what amount?

A. One unit.

Q. How long was the quantity discount paid C. D. Kenny Company and the competitive adjustment paid Timberlake Grocery Company?

A. That was during the entire period covered by this schedule.

Q. Are there any wholesale customers of the Morton Salt Company doing business in the States of Georgia or Florida who receive a quantity discount or a competitive adjustment who are not included under the classification "Discount Wholesalers" on Respondent's Exhibit 12-A?

A. No, they are all included.

Q. Now, referring to the same exhibit and to the next classification, "Non-discount Wholesalers who testified for Commission" and the continuation thereof onto Re-
2508 spondent's Exhibit 12-B, was the composition of that group ascertained from an examination of the transcript of the record in this case?

A. It was.

Q. Referring to that same classification, and to the tabulations of Winn & Lovett Grocery Company, Daylight Grocery Company, Setzers Stores, Mulberry Market, Alterman

Brothers, and B. & B. Cash Grocery Stores, are the tabulations for those customers the same under that classification as appear for those same customers under the classification "Non-discount Retailers who testified for Commission" on Respondent's Exhibit 12-A?

A. They are the same.

Q. And those companies just named in my preceding question do both a wholesale and retail business, is that correct?

A. That is correct.

Q. And the figures for each of those companies, where they appear under either classification, are total sales of the Morton Salt Company for table salt other than the Blue Can to each of those customers, is that right?

A. That is right.

Q. Were the tabulations regarding sales of table salt for the Morton Salt Company, other than the Blue Can, to Bryan-Keefe & Adams Company and to Florida Wholesale Grocery Company tabulated in the same manner so as to include the same sales that you testified to with respect to those same two customers in connection with Respondent's Exhibit 11-A?

2509

A. They would be the same.

Q. That is, the manner of making the tabulation was the same in both cases?

A. That is correct.

Q. And the customers or subsidiaries or affiliates were included on the same basis in each instance, is that right?

A. They were.

Q. With respect to all other customers appearing under the classification "Non-discount Wholesalers who testified for the Commission", were all sales to all those customers included and any branches which each might have had included for each respective customer?

A. They were.

Q. Referring now to the classification "Other Non-discount Wholesalers" on Respondent's Exhibit 12-B and continuing on to 12-C, will you state how the composition of that grouping was determined?

A. From an examination of transcript of the record in this case; all non-discount wholesalers who were named by any witness for the Commission were included.

Q. And with respect to those which have been included under that classification, the entire sales of the Morton

Salt Company of table salt other than Blue Can to
2510 each of those customers for each of the years in question has been shown, is that correct?

A. That is correct.

Q. Were the percentage figures appearing on Respondent's Exhibits 12-A, B, and C computed in the same manner and by the same persons and for the same purpose, under your supervision, as you have testified to with respect to the percentages appearing on previous similar exhibits?

A. They were.

Q. Mr. Coyne, I show you now Respondent's Exhibits 13-A, B, C, D, and E.

Referring to Respondent's Exhibit 13-A and to the Great Atlantic & Pacific Tea Company, under the first classification, "Discount Retailers", will you state what sales were included in the tabulation for that customer?

A. That would be all of their branches in North and South Carolina.

Q. And purchases of the Great Atlantic & Pacific Tea Company from any purchasing points outside of those two States have not been included, is that correct?

A. That is correct.

Q. Now, with respect to Colonial Stores, under the same classification on the same exhibit, what sales are included in the tabulation for that company?

A. Their Norfolk division.

2511 Q. Do you know whether or not their Norfolk division purchases for their retail outlets in North Carolina and South Carolina?

A. I do.

Q. And does it include purchases for those two States?

A. It does.

Q. With respect to Dixie Home Stores, are the entire purchases of that company included in this tabulation?

A. They are.

Q. And the figures shown there cover the direct shipments to Dixie Home Stores for the respective years in question, is that correct?

A. That is correct.

Q. You previously testified that the Atlantic & Pacific Tea Company receives a 15-cent quantity discount, is that right?

A. That is right.

Q. For the entire period shown by this exhibit?

A. That is right.
Q. What discount, if any, does Colonial Stores receive?
A. 10 cents per case.
Q. And that is as a 5,000-case purchaser, is that right?
A. That is right.
Q. And was that received for the entire period shown by this exhibit?
2512 A. It was.
Q. With respect to Dixie Home Stores, what discount, if any, did that customer receive?
A. 10 cents per case.
Q. And did that company receive that discount for the entire period shown?
A. They qualified in November of 1937.
Q. And have received the discount since that date, is that correct?
A. That is correct.
Q. Will you describe, Mr. Coyne, what sales are included for the Dixie Home Stores in the year 1937 and each year thereafter?
A. That would be all of their purchases of the Blue Can.
Q. By "all of their purchases", what do you mean by that?
A. All of their direct purchases.
Q. Where the shipments were direct to Dixie Home Stores, is that correct?
A. That is correct.
Q. Mr. Coyne, you testified that Dixie Home Stores qualified in November of 1937. You mean by that that they had completed their first year of qualification or that they were beginning their qualification on that date?
A. That would be the date that they began qualifying for that 5,000-case discount.
2513 Q. So that the first completed period of qualification would not be until November, 1938, is that correct?
A. That is correct.
Q. Then the tabulations for Dixie Home Stores for each of the years in question reflect only the direct shipments of the Blue Can from Morton Salt Company to Dixie Home Stores itself, is that correct?
A. That is correct.
Q. Are there any retail customers of the Morton Salt Company, insofar as the Blue Can is concerned, which op-

erate in either North Carolina or South Carolina and which receive a discount, a quantity discount, which is not shown on Respondent's Exhibit 13-A under the classification "Discount Retailers"?

A. No, they are all shown.

Q. Now, referring to the second classification, "Non-discount Retailers" on Respondent's Exhibit 13-A, will you state whether or not all the purchases by Farmers' Federation from the Morton Salt Company are included for each of the years in question?

A. They are all included.

Q. Does the Farmers' Federation do both a wholesale and a retail business?

A. They do.

Q. But their entire purchases from the Morton
2514 Salt Company are included at that point, is that correct?

A. That is correct.

Q. Now, referring to the classification "Discount Wholesalers", what purchases of C. D. Kenny Company are included?

A. All branches in North and South Carolina.

Q. And what purchases of Thomas & Howard companies are included?

A. That is all the branches of the Thomas & Howard Company except the Timberlake Grocery Company and the Christiansburg Canning Company.

Q. So that there are included, then, only the branches of the Thomas & Howard companies in North Carolina and South Carolina, is that correct?

A. That is correct.

Mr. Haslett: I assume, Mr. Examiner, that I have my objection to the use of the word "branches" on the document?

Trial Examiner Purcell: Yes, a statement was made to that effect by Mr. McBride yesterday, if I remember.

Mr. McBride: Correct, and I am not attempting to recede from my position.

Trial Examiner Purcell: I understand. Your objection is saved, Mr. Haslett.

By Mr. McBride:

Q. Now, with respect to the Charles Moody Com-
2515 pany, will you state what purchases of the Blue Can are included in the tabulation for that company?

A. All of their direct purchases.

Q. In other words, the direct shipments of the Blue Can by Morton Salt Company to Charles Moody Company are included for each of the years in question for that company, is that correct?

A. That is correct.

Q. Now, is the same thing true with respect to Draughn-Hall Company, Mr. Coyne, as to the composition of the sales shown in the tabulations for that company?

A. Yes.

Q. Will you state when the Charles Moody Company commenced to qualify for the quantity discount?

A. They commenced qualifying in January of 1938.

Mr. Haslett: Mr. Examiner, I am going to have to interpose an objection to that question and answer because it is not in accordance with the facts stated in the record. Mr. McBride has been examining as to shipments. Charles Moody Company and Draughn-Hall have never qualified for the discount on their shipments direct to them and I think that it works for an ambiguity in the record.

Mr. McBride: If the Examiner please, I don't see that any ambiguity will arise from the record at all. There is certain evidence in the record of certain companies, 2516 be they wholesalers or retailers, who have from time to time purchased the Blue Can from either Charles Moody Company or Draughn-Hall Company or Dixie Home Stores. The record remains unchanged on that score.

Dixie Home Stores, Charles Moody Company, and Draughn-Hall Company were invoiced by the Morton Salt Company, as appears from the record, and on that basis the Morton Salt Company qualified them. We are not talking about whether we were or were not justified or whether it was done legally or not.

Trial Examiner Purcell: That is enough on the record.

Mr. McBride: I want to add one statement.

Trial Examiner Purcell: All right, go ahead.

Mr. McBride: Here I am simply trying to show accurately what tabulations are included for an utterly different purpose, on an utterly different type of schedule, and that is all, and it is not to vary the record in any other regard.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: Mr. Examiner, after a discussion with Mr. McBride, I shall withdraw my objection.

By Mr. McBride:

2517 Q. When did Draughn-Hall Company commence to qualify for the quantity discount?

A. In August of 1938.

Q. Mr. Coyne, are there any wholesale customers of the Morton Salt Company in the States of North Carolina or South Carolina who receive a quantity discount and who are not shown under the classification "Discount Wholesalers" on Respondent's Exhibit 13-A?

A. No.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. Now, with respect to the classification, Mr. Coyne, "Non-discount Wholesalers who testified for the Commission" appearing on Respondent's Exhibit 13-A, how was the composition of that group determined?

A. By an examination of the transcript of the record in this case.

Q. With respect to Farmers' Federation appearing under that same classification, are the tabulations for that customer the same as for that customer where it appears under the classification "Non-discount Retailers" on Respondent's Exhibit 13-A?

A. The figures are the same.

2518 Q. Referring now to Respondent's Exhibit 13-A and to the classification "Other Non-discount Wholesalers", will you state how the composition of that group was arrived at?

A. By an examination of the transcript of the record in this case.

Q. And that examination disclosed what with respect to that group?

A. Those customers who testified for the Commission.

Q. Do you mean to say that the customers listed under the heading "Other Non-discount Wholesalers" testified for the Commission?

A. No, I was confused with the group ahead there.

Q. Then how were the customers placed under the grouping "Other Non-discount Wholesalers" arrived at in making this tabulation?

A. Well, any customer that was identified as a competitor by any of the witnesses who testified for the Commission was included in this grouping.

Q. If the competitor was a wholesaler, is that correct?

A. That is correct.

Q. And with respect to each of the customers under the classification "Other Non-discount Wholesalers", that represents all sales of the Morton Salt Company Blue Can for each of those customers for each of the years included in that exhibit?

2519 A. That is right.

Q. Now, referring to "wholesalers purchasing from discount customers", will you state how that classification was arrived at?

A. That was arrived at by examination of the Morton Salt Company shipping and sales records.

Q. And from the examination of the shipping and sales records, you have included for each of the years in question for each of the customers under that grouping all sales of the Blue Can made by the Morton Salt Company to each of those customers and all shipments made by the Morton Salt Company to each of those customers, is that correct?

A. That is correct.

Q. Now, is the same thing true with respect to the customers appearing under the grouping "Retailers purchasing from discount customers" appearing on Respondent's Exhibit No. 13-E?

A. It would be the same.

Q. The tabulations were prepared on the same basis, is that correct?

A. That is correct.

Q. Now, with respect to Ebbs Brothers, which appears as the first customer under the classification "Wholesalers purchasing from discount customers", does that company do both a wholesale and a retail business?

2520 A. They do.

Q. And are the total sales of the Blue Can and the total shipments of the Blue Can to Ebbs Brothers included in the tabulation for that customer under that classification?

A. Yes, they are.

Q. Is the tabulation for Ebbs Brothers, where it appears under "Retailers purchasing from discount customers", the same as that to which you have just testified?

A. The figures are the same.

2521 ARNOLD J. COYNE resumed the stand and was examined and testified further as follows:

Direct Examination (Continued) by Mr. McBride.

Q. Mr. Coyne, I show you Respondent's Exhibit 14-A, B, C, and D.

Referring first to Great Atlantic & Pacific Tea Company, under the classification "Discount Retailers" on Respondent's Exhibit 14-A, will you state what sales of table salt other than the Blue Can are included in the tabulation for that customer?

A. All the North and South Carolina points.

Q. So that no purchases of A. & P. Tea Company of the purchasing points outside the States of North Carolina and South Carolina, are included, is that correct?

A. That is correct.

Q. Will you likewise state what sales to Colonial Stores are included under the same classification on the same exhibit?

A. That would be their Norfolk division; that covers North and South Carolina points.

2522 Q. And I believe you testified previously that to your knowledge the Colonial Stores purchases at its Norfolk division for North Carolina and South Carolina outlets, is that correct?

A. That is correct.

Q. With respect to the tabulations for the N. R. O. G. units, under the same classification, will you state what sales are included for that customer?

A. Those for the Mutual Distributing Company of Asheville, North Carolina, and the Mutual Distributors, Inc., at Charlotte, North Carolina.

Q. Are those houses both members of N. R. O. G., if you know?

A. They are.

Q. Are there any other N. R. O. G. houses that you know of operating in either North Carolina or South Carolina who purchase table salt other than the Blue Can from the Morton Salt Company not included in this tabulation?

A. No, they are all included.

Q. I believe you previously testified that the Atlantic

& Pacific Tea Company receives a quantity discount of one unit on table salt other than the Blue Can, is that correct?

A. That is correct.

Q. And for the entire period shown on Respondent's Exhibit 14-A?

A. For the entire period.

2523 Q. Is that also true of the N. R. O. G., also appearing on that exhibit?

A. Yes.

Q. What discount, if any, is given to Colonial Stores on table salt other than the Blue Can?

A. No quantity discount.

Q. Is there any other allowance or adjustment given?

A. Yes, there is a one-unit competitive allowance.

Q. And for what period of time was that paid?

A. Well, it was paid to them in July of 1941.

Q. It commenced in July, 1941?

A. Payments commenced in July, 1941.

Q. And have continued since that time for the period shown on the tabulation?

A. They have.

Q. Are there any retailers doing business in North Carolina or South Carolina who are customers of the Morton Salt Company as to table salt other than the Blue Can and which receive either a quantity or a competitive adjustment whose names do not appear under the classification "Discount Retailers" on Respondent's Exhibit 14-A?

A. No.

Q. Referring now to the classification "Non-discount Retailers" on Respondent's Exhibit 14-A, will you state what purchases are included for Dixie Home Stores,

2524 being the first customer shown under that classification?

A. Those for North and South Carolina.

Q. And that is all purchases of that company for North and South Carolina, of all purchases other than the Blue Can, is that correct?

A. That is true.

Q. Is that also true of the remaining customers listed under the classification "Non-discount Retailers"?

A. Yes.

Q. Now, with respect to Farmers' Federation and Ebbs Brothers, do those customers perform strictly a retail function or do they perform other functions?

A. They both wholesale and retail.

Q. But, nevertheless, with respect to those two customers, their entire purchases of table salt other than the Blue Can from Morton Salt Company from North and South Carolina are included, is that correct?

A. That is correct.

Q. Now, referring to the classification "Discount Wholesalers", will you state what sales are included with respect to Thomas & Howard companies, being the first customer listed in that classification?

A. All of their purchases for North and South Carolina points.

Q. Are the sales to the Timberlake Grocery Com-
2525 pany at either its Thomasville or Macon, Georgia, warehouse included?

A. They are.

Q. Are sales to Christiansburg Canning Company included?

A. They are not.

Q. With respect to C. D. Kenny Company, will you state what sales to that company are included, geographically?

A. All of their purchases for North and South Carolina branches.

Q. Now, what discount, if any, was paid to Thomas & Howard companies during the period shown on the tabulation?

A. No quantity discount was paid to Thomas & Howard companies.

Q. Was there an adjustment or an allowance paid during that period?

A. Yes, there was.

Q. And in what amount?

A. One unit.

Q. Was that paid for the entire period shown by the tabulation?

A. It was.

Q. Was a quantity discount paid C. D. Kenny Company?

A. Yes.

Q. And how much and for what period?

A. A one-unit quantity discount was paid to C. D.
2526 Kenny during the entire period.

Q. Were there any wholesalers of the Morton Salt Company, regarding table salt other than the Blue Can in

either North Carolina or South Carolina, for the period covered by the tabulation, who received either a quantity discount or a competitive allowance which are not included under the classification "Discount Wholesalers" on Respondent's Exhibit 14-A?

A. No.

Q. I believe, Mr. Coyne, you explained before with respect to similar schedules that customers receiving a competitive adjustment were included under various discount wholesaler or discount retailer classifications for comparative purposes in these tabulations, is that correct?

A. That is correct.

Q. Is that also true with respect to Thomas & Howard companies, under the classification "Discount Wholesalers" on Respondent's Exhibit 14-A?

A. It is.

Q. And that would likewise have been true with respect to all customers receiving competitive allowances wherever they have been included in any of the previous exhibits of this type, is that right?

2527 Q. Referring now to the next classification on Respondent's Exhibit 14-A, "Non-discount Wholesalers who testified for the Commission", will you state how the composition of the customers under that group was determined?

A. From an examination of the transcript in this case.

Q. So all wholesalers who testified for the Commission who operated in North Carolina or South Carolina, shown by the transcript of the record, are included under that classification, is that right?

A. They are.

Q. Referring now to Farmers' Federation, which is the first customer appearing under that classification, to which you have just testified, are the figures for that company the same as for Farmers' Federation where it appears under classification "Non-discount Retailers" on Respondent's Exhibit 14-A?

A. They are the same.

Q. So that according to the tabulation, Farmers' Federation is shown as not having purchased any table salt other than the Blue Can from Morton Salt Company during the period shown by Respondent's Exhibit 14-A, is that correct?

A. That is correct.

Q. Now, with respect to Ebbs Brothers, would your testimony be the same regarding Ebbs Brothers, appearing also under the classification "Non-discount Wholesalers . . . who testified for the Commission" and also under the 2528 classification "Non-discount Retailers"?

A. It would be the same.

Q. Referring now to Respondent's Exhibit 14-B and to the classification "Other non-discount Wholesalers" appearing thereon and continuing through Respondent's Exhibit 14-C and 14-D, will you state how the composition of the customers under that classification was determined?

A. From the examination of the transcript in the record of this case, and all non-discount wholesalers were listed who were mentioned as competitive by witnesses for the Commission.

Q. And with respect to each of those customers, their entire purchases for the years in question of table salt other than the Blue Can from the Morton Salt Company are shown on the tabulation, is that correct?

A. That is correct.

Q. There appears on Respondent's Exhibits 14-A, B, C, and D various percentages. Were those percentages computed and used in the manner and for the purposes with respect to which you have testified regarding the percentages appearing on previous exhibits of this type?

Trial Examiner Purcell: Let me hear that question.

(The question above referred to was read by the reporter.)

Trial Examiner Purcell: Computed and used?

Mr. McBride: Perhaps I should reframe that and 2529 make it a little more accurate, Mr. Examiner.

Trial Examiner Purcell: Let the record note the withdrawal of the question.

By Mr. McBride:

Q. Were the percentages appearing on Respondent's Exhibits 14-A, B, C, and D computed in the same manner and by the same persons and under your supervision, as you testified to with respect to the percentages appearing on previous Respondent's Exhibits of this type?

A. They were.

Q. Mr. Coyne, I show you Respondent's Exhibits 15-A and 15-B. Referring to Respondent's Exhibit 15-A, are all branch houses of C. D. Kenny Company located in Florida,

Georgia, South Carolina, or North Carolina included in the tabulation on that exhibit?

A. They are.

Q. And the tabulations, then, are by individual houses of C. D. Kenny Company in the States named, is that correct?

A. That is correct.

Q. Referring to Respondent's Exhibit 15-B, are all Thomas & Howard Company corporations or houses or branches included in the tabulation under Thomas & Howard companies, insofar as South Carolina, North Carolina, and Georgia are concerned?

A. They are.

Q. Are there any Thomas & Howard companies
2530 or branches or houses in the State of Florida, so far as the records of the Morton Salt Company disclose?

A. No, there are no branches in Florida.

Q. Are all branches of the Timberlake Grocery Company shown on Respondent's Exhibit 15-B?

A. Yes.

Q. Are there any branches or purchasing points of Christiansburg Canning Company that you know of which are not shown on Respondent's Exhibit 15-B?

A. None that I know of.

Q. So that the tabulation is complete as to that customer, so far as the records of the Morton Salt Company are concerned, is that right?

A. Yes.

Q. Mr. Coyne, with respect to Respondent's Exhibits 7-A to 15-B, all inclusive, do any of the tabulations appearing on any of those exhibits include or reflect sales of Morton Salt Company of any type of salt other than table salt, including the Blue Can?

A. No.

Q. So that the entire tabulations covered by the exhibits just referred to are confined to table salt tabulations of the Morton Salt Company, is that correct?

A. That is correct.

Q. Likewise, with respect to all of the Respond-
2531 ent's Exhibits 7-A to 15-B, all inclusive, do all those tabulations or any of them in any way reflect carload discounts?

A. They do not.

Q. So that in referring to quantity discounts from time

to time in your testimony pertaining to these exhibits and with respect to the exhibits themselves, no reference is made to or no calculation is based upon carload discounts, is that right?

A. That is right.

Mr. McBride: I will ask the reporter to mark this as Respondent's Exhibit 16 for identification.

(The document referred to was marked "Respondent's Exhibit 16" for identification.)

Mr. Haslett: Off the record.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Mr. Haslett, it is stipulated by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibit No. 16 for identification is a tabulation from the sales records of the Morton Salt Company of the sales of the Morton Salt Company to the Atlanta division of Colonial Stores, Inc., of table salt, exclusive of sales of the Blue Can, for the months, for each of the months January to December, both inclusive, 2532 for the year 1941?

Mr. Haslett: That is correct, and it is stipulated as to the identity of the document.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibit No. 16.

Mr. Haslett: And I object to the receiving of the document in evidence on the same grounds as those stated in the objection to Respondent's Exhibits 7-A to 15-B, that they are immaterial to the issues in the case.

Trial Examiner Purcell: Objection overruled and the document will be received in evidence and marked as Respondent's Exhibit 16.

(The document referred to, heretofore marked for identification "RESPONDENT'S EXHIBIT 16", was received in evidence.)

Trial Examiner Purcell: Of course, Mr. McBride, with regard to this tabulation, I assume that the same tender of access to the records of the Morton Salt Company continues?

Mr. McBride: That is correct, and I mean that tender to be continuing with respect to any and all books and records of the Morton Salt Company having any pertinency or bearing upon any tabulation heretofore offered in evi-

dence or to be hereafter offered in evidence on behalf of the respondent, Morton Salt Company.

2533 Mr. Examiner, in the course of the testimony by Mr. Coyne with respect to Respondent's Exhibits 7-A to 16, all inclusive, it has appeared that various of the customers included in the various tabulations have from time to time during periods covered by each of the tabulations received quantity discounts of one type or another, exclusive of carload discounts, and that some of them have received competitive adjustments of one type or another, and that the beginning date for the payments of some of those quantity discounts or of some of those competitive adjustments has been subsequent to the year 1937, which is the first full year of tabulation appearing on any of the exhibits just referred to.

The commencing date of those payments or quantity discounts, where they do not cover the entire period, does not appear by way of footnotes or comments on the exhibits themselves.

For the purpose of clarity and facility in preparing this case and with the consent of the Trial Examiner and of the attorney for the Commission, I should like to be permitted to insert upon the exhibits in question at the appropriate places footnotes reflecting the facts just referred to, the accuracy of the footnotes, insofar as their corresponding to the testimony in the record, to be verified by the Trial Examiner and the attorney for the Commission.

2534 Trial Examiner Purcell: Is that acceptable to you, Mr. Haslett?

Mr. Haslett: Mr. Examiner, that is acceptable to me. Of course, it is entirely within the Examiner's authority to rule on such questions.

Trial Examiner Purcell: I should like to consult counsel on both sides, however, before making any ruling. Permission to do that will be granted by the Examiner, Mr. McBride, if you will execute a proper receipt for the exhibits to be handed to the reporter for her protection.

Mr. McBride: I shall do that.

Trial Examiner Purcell: And you do that at your own convenience, I mean withdraw the exhibits at your own convenience.

Mr. McBride: All right, I shall do that.

I should like to have the reporter mark this as Respondent's Exhibit 17 for identification.

(The document referred to was marked "Respondent's Exhibit 17" for identification.)

Mr. McBride: Mr. Haslett, is it stipulated by and between the attorney for the Commission and the attorney for the respondent that Respondent's Exhibit 17 for identification is a tabulation from the records of the Morton Salt Company having to do with the amount of l.c.l. shipments moving by rail on billings out of Chicago, Illinois,
2535 for the period of September 1, 1939, to August 31, 1940?

Mr. Haslett: That is correct.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibit 17.

Mr. Haslett: I object to the document, Mr. Examiner, on its materiality, its relevancy and its competency. I think the document hasn't any bearing upon the issues of the case and it should be excluded and not received into evidence.

Mr. McBride: Mr. Examiner, I tender the document, consistent with my tenders of Respondent's Exhibits 7-A to 16, inclusive, in support of the defense available to the defendant of non-injury to competition resulting from certain quantity discounts in issue in this case and I look upon this tabulation as being quite material to the respondent's defense on that score.

Trial Examiner Purcell: Are you limiting your tender to that?

Mr. McBride: I am.

Trial Examiner Purcell: Sir?

Mr. McBride: I am, yes.

Trial Examiner Purcell: The objection to the introduction of the document into evidence is overruled and the reporter will mark the document as Respondent's Exhibit No. 17 in evidence.

2536 (The document referred to, heretofore marked for identification "RESPONDENT'S EXHIBIT 17," was received in evidence.)

By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit 17 and, referring to the figures appearing in the first column of figures on that schedule, beginning with the figure $1,378.21,

and ending with the figure $152.29, will you state what those figures are?

A. They are the net sales after freight for the items shown in column 1, covering l.c.l. shipments moving by rail on the Chicago, Illinois, billings for the period of September 1, 1939, to August 31, 1940.

Q. Do you mean that each of the figures shown for those items are the total figures for each item for the entire period or for the specified six months shown at the top of the exhibit referred to?

A. I mean for the months shown on the exhibit, October and December, 1939; February, April, June, and August of 1940.

Q. So that, for example, the figure of $1,378.21 represents the total l.c.l. shipments moving by rail on Chicago, Illinois, billings of Morton's Blue Package for the particular months, October and December, 1939 and February, April, June, and August, 1940, is that correct?

A. That is correct.

2537 Q. And that figure of $1,378.21, referring to the Morton's Blue Package item, are all the aggregate net sales after freight for all the six months just specified, is that correct?

A. That is correct.

Q. And that same statement is true, is it, Mr. Coyne, with respect to the remaining items on that tabulation down through "Coarse Rock bbls. and bags" on the exhibit?

A. That is correct.

Q. Then for all the items shown in the left-hand margin of Respondent's Exhibits 17, the aggregate net sales after freight is $21,627.61 for the specified six months of October and December, 1939, and February, April, June, and August, 1940, is that correct?

A. That is correct.

Q. Mr. Coyne, in your experience as the general office manager and prior to that the assistant general office manager of Chicago and associated offices, do you regard October and December, February, April, June, and August as the representative months out of any twelve months' period with regard to the quantity and nature of l.c.l. shipments?

A. Yes, I do.

Q. From your experience, can you state which is the

peak month for l.c.l. shipments, so far as the Morton Salt Company is concerned?

2538 A. October.

Q. In other words, by and large, October has become the peak month for less-than-carload shipments, in your experience, is that correct?

A. That is correct.

Q. And the tabulations for October of 1939 appear on Respondent's Exhibit 17?

A. They do.

Q. Referring to smoke salt, Mr. Coyne, being the third item on the tabulation, showing the sum of $11,649.97, is there any difference in the price of the Morton Salt Company for that item if it is shipped on a less-than-carload basis or if it moves in carload shipments?

A. There is no difference in the price.

Q. Is that also true of Tender-Quick, being the fourth item, and showing $1,831.29?

A. It is also true of the Tender-Quick.

Q. And is that also true of the Seasoning, being the fifth item, and showing the amount of $3,463.49?

A. It is.

Q. With respect, Mr. Coyne, to all the other items on Respondent's Exhibit 17, referring to the left-hand margin, exclusive of smoke salt, Tender-Quick, and Seasoning, is there an l.c.l. price and a carload price for each of those items?

2539 A. There is for the Morton's Blue Package and the Star Kosher salt.

Q. And with respect to the remaining items, is there a different price for carload shipments and l.c.l. shipments?

A. Yes.

Q. Now, referring to the figure $16,944.75, will you state what that represents?

A. Sales on your non-carload discount items.

Q. And what do you refer to by non-carload discount items?

A. I refer to the Smoke salt, Tender-Quick and Seasoning. The asterisk items, I refer to.

Q. And then does the figures $16,944.75 represent the total of the amount shown for the Smoke salt, Tender-Quick, and Seasoning?

A. It does.

Q. Now, with respect to the $4,682.86 item, does that

represent the difference between $21,627.61 and the $16,944.75?

A. It does.

Q. And that would be the aggregate amount for the six months specified at the top of Respondent's Exhibit 17 for less-than-carload shipments on Chicago office billing for items which have a less-than-carload price and a carload price, is that correct?

A. That is correct.

2540 Q. Mr. Coyne, referring to Respondent's Exhibit 17, does that exhibit show the total net sales after freight moving both in carload shipments and in less-than-carload shipments on Chicago office billings for the period September 1, 1939, to August 31, 1940?

A. No, it doesn't.

Q. Will you state what is shown with respect to the total net sales after freight shipments for that period, if you can describe it briefly?

A. That figure shows the Chicago and associated offices.

Q. In referring to associated offices, now, you are referring to the same group of associated offices regarding which you have testified during the past two days, is that correct?

A. That is correct.

Trial Examiner Purcell: And they would be what?

The Witness: Chicago, Chicago City, Detroit, Milwaukee, Minneapolis, St. Louis, New Orleans. I think that covers it.

By Mr. McBride:

Q. Mr. Coyne, is the figure to which you have testified, the figure of $6,799,916.41, appearing on Respondent's Exhibit 17?

A. Yes, it is.

Q. And that is denominated on the tabulation, is it, 2541 as total net sales after freight for the period September 1, 1939, to August 31, 1940, on all salt items, on all shipments?

A. Yes.

Q. And by "total net sales after freight", you mean the gross sales after making adjustments for freight only, is that correct?

A. That is correct.

Q. Does that figure in any way reflect adjustments for returns and allowances?

A. It does not.

Q. Does it in any way reflect any adjustments for discounts paid of any kind or description?

A. No, it does not.

Q. But it does reflect the total billings out of Chicago and the associated offices to which you have just testified, is that correct?

A. That is correct.

Q. And it includes shipments of all salt items moving either in carload shipments or in less-than-carload shipments, still referring to the figure just specified, is that correct?

A. That is correct.

Q. Referring now to the figure $43,255.22, will you state how that figure was arrived at?

2542 A. Well, that is two times the $21,627.61 shown in the first column of figures.

Q. And the multiple of two was used for what reason?

A. To get a twelve months' picture because only six months were sampled.

Q. In other words, if $21,627.61 is a six months' sample, then the $43,255.22 is a projection on a twelve months' basis?

A. That is correct.

Q. How was the figure .06 per cent arrived at, Mr. Coyne?

A. Well, that is the net figure that was arrived at by dividing your $43,255.22 by your total net sales after freight, or $6,799,916.41.

Q. Now, will you describe how the figure $9,365.72 was arrived at?

A. That is two times $4,682.86, which is the last figure shown on the first column of figures.

Q. And the multiple two was used to project that figure of $4,682.86 on a twelve months' basis, is that correct?

A. That is correct.

Q. And how was the one tenth of one per cent figure arrived at?

A. By dividing the figure of $9,365.72 by $6,799,916.41, which is the total of our net sales after freight.

Q. Referring once more, Mr. Coyne, to the figure

2543 $21,627.61, does that figure represent the aggregate l. c. l. shipments covered by the billings of the Chicago

office and of the associated offices for the six months' period specified?

A. In effect, yes.

Q. You say "in effect." Will you explain what you mean by that?

A. Because there are no l. c. l. shipments from the various warehouses.

Q. So that, in effect, the $21,627.61 then covers the Chicago and associated offices, and that would be true with the remaining two figures appearing immediately thereunder; is that correct?

A. That is correct.

Mr. McBride: I ask the reporter to mark this as Respondent's Exhibit 18 for identification.

(The document referred to was marked "Respondent's Exhibit 18" for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibit 18 for identification is a tabulation from the records of the Morton Salt Company showing the number of cases of Blue Can purchased, the net value of the Blue Can purchased, the value of other table salt purchased, the value of other salt items purchased, the net total value of all salt items pur-
2544 chased, the number of invoices rendered, and the discount paid to $50,000 discount customers for the period of September 1, 1939, to August 31, 1940?

Mr. Haslett: That is correct, sir.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibit 18.

Mr. Haslett: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be marked by the reporter as Respondent's Exhibit No. 18 in evidence.

(The document referred to, heretofore marked for identification "RESPONDENT'S EXHIBIT 18", was received in evidence.)

Mr. McBride: I ask the reporter to mark that as Respondent's Exhibit No. 19 for identification.

(The document referred to was marked "Respondent's Exhibit 19" for identification.)

Mr. McBride: And let that be marked as Respondent's Exhibits 20-A and B for identification.

(The documents referred to were marked "Respondent's Exhibits 20-A and B" for identification.)

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibit 19 for identification is a tabulation from the records of the Morton Salt
2545 Company of the cases of Blue Can purchased, the net value of the Blue Can purchased, the value of other table salt purchased, the net value of other salt items purchased, the total net value of all salt items purchased, the number of invoices rendered, and the amount of discount paid with respect to 50,000-case discount customers, referring to Blue Can cases, for the period September 1, 1939, to August 31, 1940?

Mr. Haslett: That is correct, sir.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibit 19.

Mr. Haslett: No objection.

Trial Examiner Purcell: There being no objection, the instrument described will be received in evidence and marked by the reporter as Respondent's Exhibit 19.

(The document referred to, heretofore marked for identification "RESPONDENT'S EXHIBIT 19", was received in evidence.)

Mr. McBride: Off the record.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Is it stipulated, Mr. Haslett, by and between counsel for the Commission and counsel for the respondent that Respondent's Exhibit 20-A and 20-B for identification is a stipulation from the records of the
2546 Morton Salt Company of the number of invoices issued, the number of cases of Blue Can purchased, the net total sales value of all salt purchases, and the total discount paid to the 50,000-case discount customers listed thereon for the period September 1, 1939, to August 31, 1940?

Mr. Haslett: That is correct.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibits Nos. 20-A and 20-B, including the written notation appearing on Respondent's Exhibit 20-A.

Mr. Haslett: Mr. Examiner, I have no objection to the receiving of the documents in evidence, as the documents now stand, but I do want to reserve my right to make a motion to strike Respondent's Exhibits 18, 19, and 20-A and B if at some later date during these hearings that we

find that they are part of some attempted cost justification, and I do not want to be bound by the figures that appear thereon if, after due checking by the Commission's accountant, that the figures should be found erroneous.

Trial Examiner Purcell: Is such a reservation acceptable to you, Mr. McBride?

Mr. McBride: It is, Mr. Examiner, so long as I understand that Mr. Haslett is not reserving the right to move to strike the exhibit simply because it might form a part of a cost picture, but only if he finds that it is an inaccurate exhibit to be used in connection with the cost pic-
2547 ture.

Mr. Haslett: No, my purpose, Mr. Examiner, in making the reservation was to have the privilege of making a motion to strike these three exhibits if they do become a part of a future picture on the exhibits as they now stand, and at this stage of the proceeding I have no objection to them in the record, but I don't want to be bound by these if at some future time in this hearing they should become part of a picture which I would have a general objection to and to which a motion to strike would lie.

Mr. McBride: Stated on that basis, I will accept the reservation.

Trial Examiner Purcell: In the light of the foregoing discussion between counsel, the document heretofore identified as Respondent's Exhibits 20-A and B will be received in evidence and so marked by the reporter.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 20-A and 20-B, were received in evidence.)

2548 Room 116, Sherman Hotel,
Chicago, Illinois,
Friday, October 9, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

2549 Mr. Arnold J. Coyne resumes the stand on direct on behalf of the respondent.

ARNOLD J. COYNE resumed the stand and was examined and testified further as follows:

Direct Examination by Mr. McBride (Continued).

Q. Mr. Coyne, I show you Respondent's Exhibit 18 and refer you to the first column of figures on that exhibit. Will you state what those figures represent, with respect to the various customers?

A. Those figures represent the total number of cases of the Blue Can purchased by each customer in the first column, for the period from September 1st of 1939 to August 31st of 1940.

Q. On what billings was that tabulation predicated?

A. The billings of the Chicago and associated offices.

Q. Are there any tabulations included in the first column of figures with respect to billings out of the Kansas City office, the Dallas office, or the San Francisco office?

A. They do not include the billings from the Kansas City, San Francisco, or the Dallas office.

2550 Q. But the first column does reflect all other billings of the Morton Salt Company, is that correct?

A. That is correct.

Q. And is your testimony with respect to the scope of

the billings involved the same with respect to any and all other tabulations appearing on Respondent's Exhibit 18?

A. It is.

Q. Referring now to the second column of figures, Mr. Coyne, will you explain what those figures represent?

A. They represent the net value after freight of the number of containers listed in the first column.

Q. Does that tabulation, referring now to the second column of figures, reflect any adjustments after returns and allowances, or any adjustments with respect to discounts paid?

A. It does not.

Q. Referring now, Mr. Coyne, to the third column of figures appearing on Respondent's Exhibit 18, will you describe what those figures represent?

A. Those figures represent the net value after freight of other table salt items other than the Blue Can.

Q. Sold to the various customers shown during the period September 1, 1939, to August 31, 1940?

A. Yes.

Q. Does the third column of figures in any way 2551 reflect adjustments for returns and allowances or for any discounts paid?

A. They do not.

Q. Referring now to the fourth column of figures on Respondent's Exhibit 18, will you describe what those figures are?

A. They represent the net value after freight of all other types of salt other than the Blue Can and other table salt.

Q. And do the figures in that fourth column reflect returns and allowances or any discounts paid?

A. They do not.

Q. So that the fourth column of figures refers to only salt items other than table salt items, is that correct?

A. That is correct.

Q. Referring now to the fifth column of figures on Respondent's Exhibit 18, will you describe what those figures are?

A. Those figures are the total value after freight of all salt.

Q. In other words, the various items appearing in the fifth column of figures represent the extended totals of the respective customers in columns 2, 3, and 4 of the figures, is that correct?

A. That is correct.

Q. Now, referring to the sixth column of figures on that same exhibit, Mr. Coyne, will you describe what those

2552 figures show?

A. Well, those figures indicate the number of invoices employed to invoice the salt shown in the second, third, and fourth columns of figures.

Q. In other words, with respect to Creasey Corporation, for example, the figure 170 at the top of the sixth column represents the number of invoices employed during the period September 1, 1939, to August 31, 1940, to bill all sales shown for Creasey Corporation in the second, third, and fourth columns of figures, is that correct?

A. That is correct.

Q. And that would be true of each customer on the exhibit?

A. That is correct.

Q. Referring now to the seventh column of figures, will you state what is shown by that column?

A. That is the discount granted to the Creasey Corporation for the figures shown in the second and third columns of figures.

Q. Now, you say "granted to the Creasey Corporation." Which figure are you referring to?

A. The $2,815.03 shown in the seventh column.

Q. Then would the remaining figures in the seventh column be the discount paid to the respective customers shown in the itemization column, Mr. Coyne?

A. It would.

2553 Q. And then in the discount column, which is the seventh column of figures, there is included discounts paid on the Blue Can and any discounts paid on the table salt other than the Blue Can, is that correct?

A. That is correct.

Q. Does the last column of figures in any way reflect the carload discount?

A. They do not.

Q. Does the last column in any way reflect any competitive adjustments?

A. It does not.

Q. It reflects only quantity discounts, is that correct, on various table salt items?

A. That is correct.

Q. Exclusive of the carload discount?

A. Exclusive of the carload discount.

Q. I show you now Respondent's Exhibit 19. Referring to the first column of figures on Respondent's Exhibit 19, will you state what those figures show?

A. Total number of cases of Blue Can purchased by the respective customers shown in the first column for the period of September 1, 1939, to August 31, 1940.

Q. On what billings was that tabulation predicated, Mr. Coyne?

A. On the billings of the Chicago and associated offices.

2554 Q. Does that column in any way reflect billings at Kansas City, Dallas, or San Francisco?

A. It does not.

Q. But it does reflect all billings of the Morton Salt Company, exclusive of those last three named offices, is that correct?

A. That is correct.

Trial Examiner Purcell: That is to say, all over the United States, with the exception of those last three offices, is that right?

The Witness: That is right.

By Mr. McBride:

Q. With respect to the remaining figures appearing on Respondent's Exhibit 19, Mr. Coyne, do those figures also reflect only the billings of Chicago and associated offices?

A. They do.

Q. And they do not reflect billings out of Kansas City, Dallas, or San Francisco?

A. That is right, they do not.

Q. Referring now to the second column of figures on the same exhibit, will you describe what those figures are?

A. They represent the net value of the Blue Can after freight for the figures shown in the first column of figures.

Q. Do the figures in the second column in any way 2555 reflect returns and allowances or any discounts paid?

A. They do not.

Q. Referring now to the third column of figures, will you describe what that column shows?

A. They represent the value of other table salt items, excluding the Blue Can.

Q. By "the value", do you mean the value after freight?

A. I do.

Q. Does the third column of figures in any way reflect returns and allowances or any discounts paid?

A. They do not.

Q. Referring now to the fourth column of figures, will you describe what the figures in that column show?

A. They represent the net value after freight of all other purchases other than the table salt and the Blue Can.

Q. And you say those are net value after freight, is that correct?

A. That is correct.

Q. And those figures do not reflect any adjustments for discounts or returns and allowances?

A. They do not.

Q. Referring now to the fifth column of figures, will you describe what those figures reflect?

A. That reflects the total net sales value after freight of the figures shown in columns 2, 3, and 4.

2556 Q. So that with respect to American Stores Company, for example, the figure $89,449.96 is the extended total of the amount shown for American Stores Company in the second, third, and fourth columns of figures, is that correct?

A. That is correct.

Q. That would likewise be true with the remaining customers shown on that exhibit?

A. That is correct.

Q. Referring now to the sixth column of figures, will you explain what those figures show?

A. They would reflect the total number of invoices employed to invoice the salt in columns 2, 3, and 4.

Q. For the period specified on the exhibit?

A. Yes.

Q. So that with respect to American Stores Company, for example, the Morton Salt Company employed 149 invoices during the period September 1, 1939, to August 31, 1940, to invoice all salt sales to that company, as shown by columns 2, 3, and 4, is that correct?

A. That is correct.

Q. Referring now to the last column of figures, will you explain what those figures reflect?

A. They would reflect the discount granted for the number of cases of Blue Can and the other table salt shown in the first column, the first column of figures

2557 for the Blue Can, and the third column of figures for the value of other table.

Q. And that is the total discount paid that company during the period September 1, 1939, to August 1, 1940, on Chicago and associated office billings?

A. That is correct, that is the amount of the quantity discount paid to them.

Q. And that would be true of each of the other customers shown with respect to the last column, is that right?

A. That is correct.

Q. Does the last column of figures in any way reflect competitive adjustments of any kind or description?

A. They do not.

Q. Does the last column of figures in any way reflect carload discounts?

A. It does not.

Q. It is confined, then, to quantity discounts on the Blue Can and to quantity discounts on Table Salt other than the Blue Can?

A. That is correct.

Q. Referring to Respondent's Exhibit 18, Mr. Coyne, does that exhibit show all customers of the Morton Salt Company who qualified as $50,000 discount customers during the period September 1, 1939, to August 31, 1940?

A. It does.

Q. Referring to Respondent's Exhibit 19, does
2558 that exhibit show all customers of the Morton Salt Company qualifying as a 50,000-case customer during the period September 1, 1939, to August 31, 1940?

A. It does.

Q. Referring once more, Mr. Coyne, to Respondent's Exhibit 18 and to the last column of that exhibit, with respect to N. R. O. G., how much discount was included in the figure for N. R. O. G. in the last column with respect to the sales of the Blue Can to that customer?

A. 10 cents per container.

Q. Now, with respect to the last column of that same exhibit, referring to the figure for National Tea Company, how much discount is included in that figure with respect to the Blue Can for National Tea Company?

A. 10 cents per container.

Q. Still referring to Respondent's Exhibit 18, Mr. Coyne, how much discount for Creasey Corporation is included in the last column of figures with respect to the Blue Can?

A. 10 cents per container.

Q. And how much is reflected in the last column regarding discounts with respect to Blue Can sales to Kroger Grocery?

A. 10 cents per case.

Q. And is that also true of C. D. Kenny Company?

A. It is.

Q. But the last column does include, does it not, Mr. Coyne, the unit quantity discount with respect to table salt other than the Blue Can for all of the customers shown on that exhibit?

2559

A. It does.

Q. Now, with respect to the last column of figures on Respondent's Exhibit 19, will you state what discount is included with regard to the Blue Can sales to American Stores Company?

A. 15 cents per container.

Q. Is that also true of all the other customers shown on that exhibit?

A. Yes.

Q. With respect to the table salt other than the Blue Can sales to each of the customers shown on that exhibit, what quantity discount is shown in the last column of figures?

A. One-unit quantity discount.

Q. So that with respect to each of those customers, the last column of figures reflects 15 cents discount on the Blue Can and a one-unit quantity discount, excluding, now, the carload discount, on sales of table salt other than the Blue Can, is that correct?

A. Yes.

Q. I show you now Respondent's Exhibit 20-A and B and ask you to state the scope of the billings on which this exhibit was predicated.

2560

A. The Chicago and associated offices.

Q. Does this exhibit reflect any billings out of Kansas City, Dallas, or San Francisco?

A. It does not.

Q. But it does reflect all other billings of the Morton Salt Company during the period September 1, 1939, to August 31, 1940, is that correct?

A. That is correct.

Q. And that is true of all figures appearing on the exhibit?

A. Yes.

Q. Referring now to the first column of figures on that exhibit, will you state what these figures show?

A. The number of invoices employed to invoice the sales to the respective customers.

Q. You say "to invoice the sales to the respective customers". Do you mean sales of all salt to those customers?

2561 A. I do.

Q. And for the entire period covered by the exhibit?

A. Yes.

Q. Referring, now, to the second column of figures on that exhibit, will you state what those figures reflect?

A. The total number of cases of Morton's Blue Can purchased by the various customers listed, for the period of September 1st, 1939, to August 31st, 1940.

Q. Referring to the third column of figures on the same exhibit, will you explain what those figures represent?

A. They represent the total value after freight of all salt purchases by the respective customers.

Mr. Haslett: Mr. Examiner, I think the testimony in regard to Respondent's Exhibits 17, 18 and 19, in fact, to all of the exhibits that the Respondent has introduced to date, is irrelevant and immaterial to the issues of the case, but I am not noting an objection, an additional objection to this type of testimony, because I think it is working for the clarity of the record, but I do want the record to show that I am not acquiescing in the examination of witnesses as to the contents of documents. These documents speak for themselves.

Trial Examiner Purcell: I expected an objection from you on that ground, and I think it would be well taken, but in the interest, as you say, of clarity, I think it

2562 advisable to spend any necessary time to clear up the various exhibits.

Mr. Haslett: I didn't want to be in the position at some later date when this case is probably being briefed by the Appellate Division, to say that objection should have been taken to these documents. I have no objection to what Mr. McBride is doing, because I think it is working for the clarity of the record.

Trial Examiner Purcell: I understand.

Mr. Haslett: But I don't want to waive my position as to the examination of the contents of these documents.

Trial Examiner Purcell: I think the position is well

taken, but in the interest of clarity all around, I think it will be helpful. It will be helpful to the Commission, and, of course, the Respondent is entitled to his day in Court. Now, might I call your attention, please—have you finished, Mr. Haslett?

Mr. Haslett: Yes, sir.

Trial Examiner Purcell: I call your attention to Respondent's Exhibit No. 20-B.

Mr. McBride: Mr. Examiner, before that, might I make one statement in connection with Mr. Haslett's statement?

Trial Examiner Purcell: Yes, I beg your pardon.

Mr. McBride: To be consistent on the record, I would like to make this statement. I understand that Mr.
2563 Haslett is not making any formal objection for a ruling, but I don't wish it to appear on the record by my silence that I am acquiescing tacitly or otherwise to his suggestion that he has a good legal ground for objecting to the testimony being taken.

Trial Examiner Purcell: Now, Mr. McBride, might I suggest, sir, that you are out of order. There is no objection pending before the Examiner.

Mr. McBride: I make this statement, or attempt to, simply because I don't know what Mr. Haslett purports to do with his statement in the future, and I don't want to be bound tacitly, or otherwise, by his observations in the statement. I realize there is no formal objection before the Examiner.

Trial Examiner Purcell: Have you finished, sir?

Mr. McBride: Yes.

Trial Examiner Purcell: All right. Now, referring to Respondent's Exhibit 20-B, the third columnar heading should have added to it the words "of all salt purchases", to make it consistent with Respondent's Exhibit No. 20-A.

Will you do that, please, Mr. McBride, in your handwriting?

Mr. McBride: Yes.

By Mr. McBride:

Q. The figures in the third column of figures reflect no returns and allowances, or none of the discounts of any kind?

2564 A. They do not.

Q. And by total purchases of the customers shown, still having to do with the third column of figures, you mean Blue Can purchases, purchases of table salt other

than Blue Can, and purchases of all other types of salt, is that correct?

A. That is correct.

Q. Referring, now, to the fourth column of figures, will you state what the figures in that column reflect?

A. They reflect the quantity discount paid on the number of cases of Blue Can shown in the second column of figures for the period of September 1st, 1939, to August 31st, 1940.

Q. Does the fourth column of figures in any way reflect carload discounts, or competitive adjustments of any kind or description?

A. They do not.

Q. Do Respondent's Exhibits 20-A and B, show all customers of the Morton Salt Company, in so far as the billings of the Chicago and associated offices are concerned, who qualified as a 5,000 case purchaser of the Blue Can either during the period shown by the exhibit, or for any portion of that period?

A. May I have the question read?

Trial Examiner Purcell: Will you read the question, please?

2565 (The question above referred to was read by the Reporter.)

The Witness: Yes.

Mr. McBride: May we have a short recess, Mr. Examiner?

Trial Examiner Purcell: Note the request of counsel. We will have a ten minute recess.

(A short recess was taken.)

Trial Examiner Purcell: Note that the recess is over. On the record.

By Mr. McBride:

Q. Then, Mr. Coyne, referring again to Respondent's Exhibits 20-A and B, if a customer, for example, had qualified as a 5,000 case customer for a twelve months period, the last month of which, for example, fell within the period September 1st, 1939 to August 31st, 1940, Respondent's Exhibits 20-A and B would reflect the last month's purchases of that customer, is that correct?

A. That is correct.

Q. And likewise, if a customer began its 5,000 case qualification period on, say, August 1st, 1940, to continue for

twelve consecutive months thereafter, the exhibit just referred to would reflect the first month's purchases of that customer, is that correct?

A. That is correct.

2566 Mr. McBride: I ask the Reporter to mark this as Respondent's Exhibit No. 21 for identification.

(The document referred to was marked Respondent's Exhibit No. 21, for identification.)

By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit No. 21 for identification, and ask you to state what it is, if you will, please.

(Passing document to the witness.)

A. It is plant expenses at our Port Huron Plant, for the handling of orders for the period of September 1st, 1939, to August 31st, of 1940.

Q. Who prepared that Exhibit, Mr. Coyne?

A. I did.

Q. And from what was it prepared?

A. From the records at the Port Huron Plant, and those at the Chicago office,

Q. Of the Morton Salt Company?

A. Of the Morton Salt Company.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibit No. 21.

Mr. Haslett: I would like to ask the witness some questions on the voir dire, Mr. Examiner.

Trial Examiner Purcell: All right.

2567 By Mr. Haslett:

Q. Mr. Coyne, does this document that is marked for identification as Respondent's Exhibit No. 21 represent all expenses incident to the plant operations at Port Huron?

A. In so far as invoicing procedures are concerned, it does.

Q. Just in so far as invoicing?

A. That is correct.

Q. What does the 50 per cent opposite "Office Manager" mean on that document?

A. The 50 per cent represents the portion of the office manager's time devoted to the invoice procedures.

Q. Well, how is that determined?

A. That is determined on the amount of his time that is spent in that regard.

Q. How is that determined, I mean, did you put in time—were time slips put in on particular items, say, invoicing, and other items?

A. No, I wouldn't say that there were time slips put in on it, but in an examination of his duties at the Port Huron plant, that portion of his time is spent directly on invoicing procedures.

Q. Is it day by day, or week by week, month by month, or what, sir?

2568 A. Do you mean in regard to the figures shown there?

Q. Yes, the 50 per cent figure.

A. The 50 per cent figure.

Q. You testified that that was the time that he devoted in supervising the invoicing of the salt going out of that plant. How was that figure arrived at? Is it an estimated figure?

A. It is 50 per cent of his wages and his time at the Port Huron Plant.

Trial Examiner Purcell: The question of counsel is, is that an estimated percentage? You can answer that yes or no.

The Witness: Yes, it is.

Mr. Haslett: I didn't get that question and answer.

Trial Examiner Purcell: I said that the question of counsel was, is the 50 per cent an estimated figure, and I told him he could answer yes or no, and he answered that it is.

Mr. Haslett: It is an estimated figure. I see.

By Mr. Haslett:

Q. Who made the estimate?

A. Well, that was estimated from an examination of his duties at the Port Huron Plant.

Q. And who made the examination?

A. I did.

2569 Q. And did you go to the Port Huron Plant and observe his activities during the entire day?

A. I have been in the Port Huron Plant numerous times.

Q. And you made an estimate of the amount of time he devoted to invoicing of the products processed at that plant?

A. That is correct.
Q. Did you corroborate the estimate?
A. None other than my observation of his duties at the plant.
Q. It is just an opinion, your opinion of what time is devoted to a particular purpose, is that correct, sir?
A. That is correct.
Q. How were the other figures arrived at in the first column of figures appearing on Respondent's Exhibit for identification 21?
A. From our observation of the duties that they perform.
Q. Just an estimate?
A. No, that is—their entire time is spent in that particular end of the work.
Q. You have two shipping clerks that devote their entire time to invoicing of the products processed at that plant?
A. That is correct.
Q. And you have a shipping foreman, that is, one shipping foreman?
2570 A. That is right.
Q. And that is his salary for the entire year?
A. That is right.
Q. The same is true as to the assistant shipping foreman?
A. Yes.
Q. How about the car checker?
A. It would be the same.
Q. Now, in the column headed "Cost Computation" do the invoices handled there issued against the orders designated as the figure 1797 carry the same quantity of products,—does each invoice carry the same quantity of products?
Mr. McBride: I would like to have that read back.
Trial Examiner Purcell: Read the question, Miss Reporter, please.
(The question above referred to was read by the Reporter.)
Mr. McBride: I am afraid I can't follow that question.

By Mr. Haslett:
Q. Do you understand the question, Mr. Coyne?
Mr. McBride: I object to it, just from lack of clarity, if the Examiner please. It can't possibly make sense the way it has been asked.

Mr. Haslett: I think the witness can determine that.

2571 Trial Examiner Purcell: Mr. McBride, I don't think the question should be characterized as senseless. I think that is quite uncalled for, sir. Mr. Haslett, could you make the question any clearer, sir?

Mr. Haslett: I was wondering if the witness understood the question.

Trial Examiner Purcell: Do you understand the question, Mr. Witness?

The Witness: May I have it read back?

Trial Examiner Purcell: Will you read the question, please?

(The question above referred to was re-read by the Reporter.)

The Witness: Each invoice would carry salt items.

By Mr. Haslett:

Q. Would each invoice be for a carload?

A. Not necessarily.

Q. That might be for less than carloads?

A. That is possible.

Q. Would it require the same time for the checking of an invoice on a carload basis, as it would on a less than carload basis, for the loading and shipping of that particular order?

Mr. McBride: If the Examiner please, I take it on voir dire counsel for the Commission can ask such ques-

2572 tions as are necessary to identify the document, to fix in his mind whether or not he has a basis for objection.

Trial Examiner Purcell: The document has been offered by counsel for the Respondent in evidence.

Mr. McBride: That is correct, but I take it now we are getting into cross-examination as to the weight of the figures.

Trial Examiner Purcell: No, I don't quite agree with you. Counsel for the Commission may proceed.

Mr. Haslett: Would you read the question, Miss Reporter?

(The question above referred to was read by the Reporter.)

The Witness: There are no loading costs included in this.

By Mr. Haslett:

Q. Are the shipping costs included in it?

A. Invoicing procedures are included.

Q. Just the cost of preparing the invoice?

A. The cost of preparing the necessary routines in connection with that work.

Q. Well, isn't it necessary in connection with the filling of an invoice that the commodity be checked?

A. Checked, yes.

Q. Well, would it cost any more to check a car
2573 than it would to check less than a car?

A. It depends on the size of the less than car shipment.

Q. There might be a difference?

A. Depending on where the item was loaded from.

Q. Would it differ, costs in different plants?

A. No, I don't believe it would.

Q. Well, we are talking about Port Huron, now. Would there be any difference between the cost of the car and less than car shipments?

A. The plant cost would be about the same.

Q. About the same.

A. At any other plant, yes.

Q. It wouldn't cost any more to check a full car than it would a quarter of a car?

A. By that do you mean that an l.c.l. shipment would be loaded in a car?

Q. That is right, sir.

A. It probably wouldn't be loaded in a car.

Q. Well, it makes no difference where it is loaded, would it cost any more to check an l.c.l. shipment of one-third of a car against a full car? Do you know whether it would or not, sir?

A. I don't say that it would cost any more.

Trial Examiner Purcell: The question is, do you know?

By Mr. Haslett:

2574 Q. Do you know?

A. Yes, I know.

Q. Have you ever made a study of it, sir?

A. Not a time study.

Q. Well, how do you know?

A. Because of the invoicing operations on the loading of various items at our plant.

Q. Which would be an estimate?

A. Which would be the time spent by the individuals who are assigned to that work.

Q. And some of those individuals might spend a part of an hour, and then a part of another hour on it, but it would just be an estimate of the time required?

A. It would be their full time spent in that particular operation, whether it were an l. c. l. or a carload.

Q. You mean to say that it doesn't require as much time, or any more time, to check a full carload than it does a third of a car?

A. Their time is devoted to that operation, whether they are working on an l. c. l. or on a car.

Q. That is not my question, what the time is devoted to. I am asking, do you think it would take less time to check a third of a car of salt than it would a full car of salt?

Mr. McBride: If the Examiner please, I again
2575 object to this line of examination. Counsel doesn't even know whether we are trying to show a difference in this. Counsel is assuming certain things that may be this exhibit is designed to prove, and maybe it isn't. If counsel wants to identify those figures on there, what they are, and how they came there, that is all right, but on an examination on voir dire of this witness, the subject of equal costs, and so forth, when there isn't even an attempt to prove a difference here, is improper.

Trial Examiner Purcell: The witness has already testified that he prepared the exhibit. It has been offered in evidence. There are certain cost computations here prepared by this witness, and I think, of course, after the instrument is introduced in evidence, if it is, it will have to go in for what it is worth, it will have to speak for itself, but there may be certain figures in here that would be very detrimental to the Commission's case, the way they are prepared, the way they are set up, and I think that counsel for the Commission is entitled to explore very thoroughly the qualification of this witness in preparing this exhibit, and what methods he pursued in the preparation of it, and what background he has for the preparation of the exhibit.

I am going to permit him to inquire as far as he wishes on that. You may call it cross-examination, if you wish.

In that, I do not concur. I think that counsel for the
2576 Commission is entitled to inquire into each and every item here.

Mr. McBride: All right, I agree with the Examiner on his statement. Everything the Examiner says is correct, and I am not particular whether it be typified as cross-examination, or otherwise.

I quite concur that the counsel for the Commission has a right on voir dire to identify each and every item on this exhibit, and to examine this witness as to his qualifications in preparing the exhibits. That counsel is not doing, however.

Counsel has departed far afield from any figures on here. He has made no effort to find out what those figures are for. He is now inquiring about something that this exhibit doesn't even attempt to show.

Now, if on cross-examination of this witness, counsel wants to find out a lot of information that the Respondent may or may not be interested in, we can worry about objections then, as to whether that cross-examination is permissible, but before we even get to the question of what the scope of the cross-examination can be, counsel is approaching certain things on a voir dire, and I object to that sort of approach.

He can ask Mr. Coyne here if he wishes, quite obviously, as the Examiner has ruled, where this figure of 869 2577 comes from, or where the figure 1797 comes from, how it was arrived at, what Mr. Coyne's qualifications are for getting that figure, and putting it on this exhibit; but this exhibit says nothing about the type of testimony that Mr. Haslett is trying to elicit from this witness, and if those questions were asked on cross-examination, I would certainly object on the ground that it is beyond the scope of the direct.

Mr. Haslett: Mr. Examiner, I would like to be advised by counsel as to the purpose of the document.

Mr. McBride: I haven't had an opportunity yet to state what it is.

Trial Examiner Purcell: It has been offered. It has been identified and offered in evidence.

Mr. McBride: That is correct.

Trial Examiner Purcell: Please don't say that you haven't had an opportunity to state the object of it, because you have.

Mr. McBride: No, I haven't. The voir dire was taken immediately upon the tender, and I will state the purpose of this offer right now, if that is what counsel wishes.

Trial Examiner Purcell: All right.

Mr. McBride: This is offered as an exhibit on behalf of the Respondent to show the costs of handling invoices and orders of the Morton Salt Company. It is intro-
2578 duced to show the cost of handling all invoices and all orders, using Port Huron, Michigan, using that plant for the period September 1, 1939, to August 31, 1940, as the basis of the cost computation for handling invoices and orders in that period.

Let me say one further thing for the record, Mr. Examiner. I think Mr. Haslett's examination with respect to the figures in the first column, as to the shipping clerks and the office manager and all the rest, I take no exception to that examination. I think it is entirely fitting on voir dire that he make such an examination.

I am protesting only with respect to his last series of questions, starting in with the 1797. He can identify its identity, but not beyond that, and the witness' qualifications, of course, in arriving at those figures.

Trial Examiner Purcell: Gentlemen, I have ruled on the question, and counsel for the Commission may proceed.

Mr. McBride: I would like an exception shown, Mr. Examiner.

Trial Examiner Purcell: Let the record show the exception.

Mr. Haslett: Mr. Examiner, up to this time I haven't heard any qualifications of Mr. Coyne.

Trial Examiner Purcell: Any qualifications?

Mr. Haslett: As an accountant. I have heard the
2579 qualifications as an office manager, but not as an accountant.

Trial Examiner Purcell: Is that question before me at this time?

Mr. Haslett: No. Mr. McBride is stating about qualifications, Mr. Coyne's qualifications. I haven't heard any qualifications as to his being an expert accountant.

Trial Examiner Purcell: I don't want anything on the record at this time about qualifications, because it is not before me. I have ruled that counsel for the Commission may proceed with his examination of this witness on the voir dire, along the lines that he has been pursuing with regard to Respondent's Exhibit No. 21, and I have overruled the objection of respondent's attorney.

Mr. Haslett: Well, I make an objection to the admis-

sion of the document on the basis that nothing is shown in the document to the effect that the costs are equal on each invoice. I want to make the same reservation as to this document as I did to Respondent's Exhibits 17, 18, 19, and 20-A and B.

Mr. McBride: I want to get myself clear as to what objection I am answering here, aside from the reservation, to which I am willing to acquiesce, for the same reason as indicated before.

2580 The objection to the introduction in evidence of this exhibit is simply and solely on the grounds that it does not show that the cost of handling all invoices is the same? Is that a correct statement?

Mr. Haslett: Or equal, that is correct, as to each invoice.

Mr. McBride: I suppose, Mr. Examiner, that the short answer to that is that we don't have to prove that they are the same. We can offer them in evidence for such cost purposes as we wish to make of them, and they are not inadmissible simply because they don't happen to prove what occurs to counsel for the Commission they might well prove if we wanted to prove it that way.

We make no tender on the grounds that, necessarily, the handling of all invoices is the same. I think the objection is entirely unpredicated on any cost defense theory that I know of.

Mr. Haslett: The burden of proof, of course, is on the respondent in this case.

Mr. McBride: I quite agree to that, but I take it we don't have to prove a particular theory that might occur to counsel for the Commission.

Trial Examiner Purcell: Now, gentlemen, we have enough argument on the record. Let us get off the record.

(There was a discussion off the record.)

2581 Trial Examiner Purcell: On the record.

State your acceptance and your reservations, please, for the record.

Mr. Haslett: Mr. Examiner, I am standing on my original and principal objection, that the document is inadmissible for the fact that there is no basis that has been shown to the effect that the costs are equal as to each invoice.

I also object to the document on the ground of its materiality and relevancy.

I do want to make my general reservation that if this

document should become a part of the general picture of so-called cost justification, that a motion to strike will lie, as I have previously made in reference to Respondent's Exhibits 17, 18, 19, and 20-A and B.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. Haslett: After a general discussion of the matter off the record, and subject to the developments in that discussion as to how the figures on Respondent's Exhibit for identification No. 21 were arrived at and are to be used, I will withdraw my principal objection to the document, that is, the one based upon the fact that the document doesn't show that the costs are equal as to each in-
2582 voice, and I stand on my objection as to the materiality and relevancy of the document and, of course, subject to my motion to strike if the document, of course, is admitted.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record. In view of the statement of counsel and while the Examiner feels that the grounds of the objection stated by counsel for the Commission are well taken, nevertheless, the document described will be received in evidence and marked respondent's Exhibit No. 21, subject to the reservations of counsel for the Commission to move to strike.

(The document referred to, heretofore marked for identification "RESPONDENT'S EXHIBIT 21", was received in evidence.)

2583 ALBERT J. COYNE resumed the stand and was examined and testified further as follows:

Direct Examination (Continued).

Mr. McBride: I will ask the reporter to mark this Respondent's Exhibit 22 for identification.

(The document referred to was marked "Respondent's Exhibit 22" for identification.)

Mr. McBride: I will ask the reporter to mark this as Respondent's Exhibit 23 for identification.

(The document referred to was marked "Respondent's Exhibit 23" for identification.)

Mr. McBride: And I will ask the reporter to mark this as Respondent's Exhibit 24 for identification.

(The document referred to was marked "Respondent's Exhibit 24" for identification.)

Mr. McBride: All right.

By Mr. McBride:

Q. Mr. Coyne, I show you Respondent's Exhibit 22 for identification and ask you to state what it is.

A. This is general sales expense for the period of September 1, 1939, to August 31, 1940, covering invoic-
2584 ing and credit operations.

Q. In other words, the exhibit shows the cost of the invoicing operations and the credit operation, being part of the general sales expense for the period specified, is that correct?

A. That is correct.

Q. And is that predicated upon Chicago and associated office billings only?

A. Yes.

Q. And that schedule was prepared by you, was it?

A. Yes.

Q. Now I show you Respondent's Exhibit 23 for identification and ask you to state what that is.

A. That is the Specialty sales expense for the period of September 1, 1939, to August 31, 1940, of the Chicago and associated offices.

Q. And was that exhibit prepared by you?

A. Yes.

Q. And were the facts and figures shown on both Respondent's Exhibits 22 for identification and 23 for identification taken from the books and records of the Morton Salt Company?

A. They were.

Q. I show you Respondent's Exhibit 24 for identification and ask you to state what that is.

2585 A. That is a cost tabulation of our Chicago and associated offices for the period of September 1, 1939, to August 31, 1940.

Q. Did you prepare that exhibit, Mr. Coyne?

A. I did.

Q. And are the facts and figures appearing on that exhibit in part from the books and records of the Morton Salt Company and in part from Respondent's Exhibits 18,

19, 20, and 21, and Respondent's Exhibits for identification Nos. 22 and 23?

A. They are.

Mr. McBride: I offer in evidence, Mr. Examiner, Respondent's Exhibits Nos. 22, 23, and 24, the exhibits in question being offered as schedules, tabulations, facts and figures in support of the respondent's defense, among other defenses, that a cost saving can be shown in connection with the quantity discounts at issue in this case.

Mr. Haslett: Mr. Examiner, I would like for the record to show my objection to Respondent's Exhibits 22, 23, and 24 on the grounds that they are immaterial to the issues of the case and I want to note my usual reservation as to my motion to strike in the event that these become a part of the picture of so-called cost justification that the books, records, and files are available for checking.

Mr. McBride: Mr. Examiner, the tender of having
2586 the books, records, and files of Morton Salt Company pertaining to any of these schedules available for examination, as represented to counsel for the Commission, is a continuing one.

As to the reservation of the motion to strike just made by Mr. Haslett, I am prepared to acquiesce, of course, in that reservation, subject to Mr. Haslett's not exercising the motion until after I shall have first examined not to exceed four witnesses concerning the exhibits of respondents Nos. 22, 23, and 24, those four witnesses being Mr. Arnold J. Coyne, Mr. G. L. Connor, Mr. Herbert R. Stratford, who would be a witness recalled on behalf of the respondent, and Mr. C. L. Ostron, and from those four witnesses respondent will have completed its identification, explanation, and so forth, of the exhibits of respondent now being offered in evidence.

Trial Examiner Purcell: The objections of counsel for the Commission are overruled and in making this ruling I wish to set forth the same language as I used in the admission of Respondent's Exhibit No. 21.

The official reporter will mark the exhibits heretofore identified, respectively as Respondent's Exhibits 22, 23, and 24.

(The documents referred to, heretofore marked for identification "RESPONDENT'S EXHIBITS 22, 23, and
2587 24", were received in evidence.)

By Mr. McBride:

Q. Mr. Coyne, I believe that you previously testified that as general office manager of the Morton Salt Company and prior to that as assistant general office manager of the Morton Salt Company, you were in general charge of the invoicing and billing operations insofar as each of the plant offices of the Morton Salt Company were concerned, is that correct?

A. That is correct.

Q. In the process of exercising your supervision in that regard, have you had occasion to visit the plant offices of the Morton Salt Company and to supervise the organization of the clerical work in the plant insofar as invoicing operations are concerned?

A. I have.

Q. And is that true in particular of the plant at Port Huron, Michigan?

A. It is.

Q. Referring now to Respondent's Exhibit 21, will you state what the duties of the office manager at the Port Huron plant are, the general duties of the office manager?

A. Well, he is in complete charge of all the office routines at the plant office. He supervises the work of all the clerical staff in that office.

2588 Q. Does the office manager, as such, have any supervision over or any connection with the actual operations of the producing end of the plant or of the production operations themselves?

A. He does.

Q. What are his duties in that connection?

A. Well, there he would have charge of the supervision of all of their details in connection with production, all of their records insofar as payroll, and all other incidental duties that require clerical work in connection with production costs and activities.

Q. But does he have anything to do with the actual operation of the plant, as such?

A. Of nothing whatever, only the office end.

Q. Who has charge of the operation of the plant, as such?

A. Mr. F. C. Philbrick.

Q. How is that spelled?

A. P-h-i-l-b-r-i-c-k.

Q. Is any portion of Mr. Philbrick's salary or compensation included on Respondent's Exhibit 21?

A. No.

Q. So that in identifying the office manager, you are identifying the office manager at the plant having to do only with the clerical records at the plant office, is that correct?

2589 A. That is correct.

Q. I believe you also testified that from time to time you had visited the plant office at Port Huron, isn't that correct?

A. That is correct.

Q. During the course of that time you have observed the operations and duties of the office manager?

A. I have.

Q. And you have been familiar with the duties and operations of the office manager during the period in question?

A. Yes.

Q. Referring now to September 1, 1939, up to August 31, 1940,—

A. That is right.

Q. —in your opinion, approximately 50 percent of his time is devoted to the process of handling invoices and orders in the plant office at Port Huron, is that correct?

A. That is correct.

Q. What was the annual salary paid the office manager at Port Huron for the period in question?

A. $3,000.

Q. And the figure $1,500 represents one half of that, is that correct?

A. That is correct.

Q. Referring to the next item on the same exhibit,

2590 do the two shipping clerks devote their entire time to the invoicing or order operations, or what portion thereof do they spend?

A. They devote their entire time to it.

Q. And does the figure $4,320 represent their combined salaries for the period in question?

A. It does.

Q. What would be the duties of the two shipping clerks referred to, describing them generally?

A. Well, their duties would be handling of the orders as they are received in the plant. The office manager would

go over them first, and then turn them over to the shipping clerks.

Their duties would be checking the orders to see that necessary package material and such items were available and to see to it that the orders were put in so that they would become a part of your plant operation, insofar as getting the orders ready for shipment is concerned.

Q. Now, the next item, shipping foreman, what portion of the shipping foreman's time is devoted to invoicing, billing, or order operations?

A. His entire time.

Q. And his entire salary for the period in question is shown on the exhibit as $2,595.02?

A. It is.

2591 Q. Will you describe the duties in general of the shipping foreman?

A. Well, his duties are the handling of the copy of the order after it is taken care of in the plant office, and it is up to him to see that the proper salt items are loaded in the cars and checked into the cars, as per our copies of the orders.

Q. Now, will you describe the duties of the assistant shipping foreman?

A. They would be the same as the shipping foreman's, only he works under his supervision.

Q. How much time does the assistant shipping foreman devote to the invoicing, billing, or order operations at the plant office?

A. His entire time.

Q. And is his entire salary for the period in question shown after the identity "Assistant Shipping Foreman" on the exhibit?

A. Yes.

Q. Will you describe the duties of the car checker?

Mr. Haslett: Mr. Examiner, I want to note an objection to this line of testimony, predicated upon the ground that it is immaterial and irrelevant to the issues of the case, for the reason that the duties of these men have nothing

2592 to do with the issues of so-called cost justification.

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

I will overrule the objection. You may proceed.

By Mr. McBride:

Q. If you will answer the last question, Mr. Coyne?

A. The car checker's duties are to see that the general labor is done on the plant dock, the salt is properly stowed into the car as per the copies of the orders that are sent down to the loading and shipping foreman and the assistant shipping foreman. They also supervise the particular work insofar as the car checkers are concerned and the items that are placed in the car per the orders.

Q. Are there any other employees, Mr. Coyne, at the Port Huron plant other than those identified in the left-hand column of Respondent's Exhibit 21, which perform any duties in connection with the receiving, handling, or transmitting of invoices, billings, orders, or documents pertaining thereto?

A. No.

Q. Referring now to the computation in the middle of Respondent's Exhibit 21, entitled "Orders Handled during Period at Port Huron", will you state how the computation was made of the number of orders handled on
2593 that central tabulation on that exhibit, beginning with the figure 1015 and showing a total of 10,384?

A. It was an actual count of the orders at the Port Huron plant.

Q. So that the items by months shown the number of orders handled through the Port Huron plant and the 10,384 shows the aggregate orders handled during the period covered by the exhibit, is that correct?

A. Yes.

Q. Now, referring to the second item under the title "Cost Computation" on the same exhibit, being the number 1,797, will you state how that figure was arrived at?

A. That is the number of invoices issued against the 869 orders handled in August of 1940.

Q. And were the number of invoices tabulated by actual count, or otherwise?

A. It is an actual count.

Q. In your opinion, were the number of orders handled during August, 1940, a representative number of the number of invoices handled monthly at the Port Huron plant?

A. Yes.

Q. Will you state on what grounds you predicate that opinion, Mr. Coyne?

A. Well, if you will review the figures in the center of the exhibit, which are the total number of orders
2594 handled each month during the period of September, 1939, to August, 1940, I am sure it will establish that is an average month.

Q. Now, the figure 2.06, being the third figure under the cost computation on the same exhibit, that was arrived at in what manner?

A. By dividing the number of invoices issued against the number of orders handled in August, or 1,779 divided by 869.

Q. You mean 1,797?

A. 1,797 divided by 869.

Q. Now, referring to the next-to-the-last figure under the "Cost Computation" on Respondent's Exhibit 21, being the figure 119,422, will you state how that figure was computed?

A. That is an actual count of the invoices issued by the Chicago and associated offices for the period of September 1, 1939, to August 31, 1940.

Q. By that you mean the total number of invoices issued for all salt sales during that period?

A. I do.

Q. And does the $68,070.54, being the last figure under the cost computation, represent the result of 119,442 multiplied by .57, being the third figure from the bottom?

A. It does.

Q. Mr. Coyne, will you describe in detail the
2595 procedure followed in the Port Huron plant from the time that an order is transmitted from Chicago to the Port Huron plant until that order has been filled, excluding from that any description of the actual production of the salt involved?

A. As the plant papers are received, they are checked over by the office manager.

Q. Now, by "plant papers", if I might interrupt, will you describe what you mean by "plant papers"?

A. I mean the copy of the order as it is sent to the plant from the Chicago office.

Q. Very well. If you will proceed from there.

A. That is an actual copy of the order, which is the loading ticket, and the bills of lading. It is received there and checked over by him, and finally passed over to the two shipping clerks, who examine the order again

in detail for various items necessary for that particular order.

2596 Mr. Haslett: Mr. Coyne, I don't like to interrupt you, but hasn't this been put in the record once before?

Mr. McBride: The general routine of an order going through has, yes, but with respect to the plant portion of it, it was rather sketchy before, and I wish only to tie these details in by this question, Mr. Haslett.

Mr. Haslett: Well, I have no objection.

By Mr. McBride:

Q. Proceed, Mr. Coyne.

A. One of these shipping clerks then would prepare a running order for the various departments of the plant. An order would then be sent on down to the shipping foreman to await the items which that order specified. The shipping foreman and the assistant shipping foremen would supervise the work of the car checkers installing the materials into the car per the copy of the order, and any special shipping instructions or loading instructions which might be attached to that particular order.

When they have finished with it, it would be returned back to the plant office, where the shipping clerks then would prepare a shipping report and note any changes, or any omissions that may have been made at the loading platform in transmitting the papers back to the Chicago office for invoicing.

Q. Is that procedure the same, Mr. Coyne, regard-
2597 less of the type of salt involved on any given invoice?

In other words, is the procedure for handling the invoices and the shipping papers the same, regardless of whether it is table salt, Blue Can, or some other type of salt?

A. There is no difference.

Q. And is the procedure the same regardless of whether the invoice or shipping papers call for less than a carload shipment, or for a full carload, or ton carloads?

A. It would be the same.

Q. I believe you also testified, Mr. Coyne, that you are familiar with, and have under your supervision the clerical procedure, in so far as invoicing and shipping is concerned, at each of the other plants of the Morton Salt Company, is that correct?

A. That is correct.

Q. In your opinion, is the Port Huron Plant typical of all the other plants of the Morton Salt Company?

A. It is.

Q. And the procedure following in each of those plants is the same, is that correct?

A. It would be the same.

Q. Referring, Mr. Coyne, to Respondent's Exhibit No. 22, under the tabulation "Invoicing operations" appearing on that exhibit, will you state who determined the items to be included under that tabulation?

2598 A. I determined those items.

Q. And each of those items, then, were specified by you, is that correct?

A. That is correct.

Q. With respect to the figure for salaries, from what books and records did that particular item come?

A. From our payrool records, Morton Salt Company's payroll records.

Q. And that was furnished you pursuant to your specification of the salaries, is that correct?

A. That is correct.

Q. Who furnished that data to you? Name the person.

A. Mr. G. L. Connor.

Q. What is his position with the Company?

A. Mr. Connor is our auditor.

Q. With respect to the Social Security item appearing immediately thereunder, who furnished the figure for that item?

A. Mr. Connor.

Q. Is that likewise true of "office supplies, forms, and so forth," the item for that?

A. It is.

Q. And likewise with respect to "traffic expense"?

A. Yes.

Q. And also with respect to "tabulating expense"?

2599 A. Yes.

Q. And the rent?

A. Yes.

Q. Now, will you state on what basis you determined the inclusion of the particular items in question there, not referring to the figures, but to the items themselves, beginning, first, with the salaries.

A. I include only those people in Chicago and associated offices who are included in the procedure of the invoicing operations.

Q. Can you describe what those inclusions are?

A. They are the salaries of the clerks in our various departments in Chicago, sales, traffic, tabulating, invoicing and order department, the city department in Chicago, and the city departments covering the clerical detail in the associated offices of Chicago.

Q. Now, with respect to office supplies and forms, how did you arrive at the specification on that item?

A. That included all items incidental to our invoicing operations, such as continuous forms, carbon paper, typewriter ribbons, pencils, and all such things as that, correspondence letterheads, various items.

Q. That are used in connection with the invoicing and billing operations, is that correct?

A. That is correct.

2600 Q. With respect to traffic expense, what would be the basis of the specification of that item?

A. That included all expenses incidental to preparing of freight rates, rate books, and such other expenses as are necessary in the establishing of freight rates.

Trial Examiner Purcell: We will have a five minute recess.

(Whereupon, a short recess was taken.)

Trial Examiner Purcell: On the record. You are examining on Exhibit 22 at the present moment, I believe

By Mr. McBride:

Q. Mr. Coyne, at the expense of possible repetition, for the purpose of clarity, will you explain with respect to "Traffic Expense" on Respondent's Exhibit No. 22, the type of items specified under that heading for the purpose of that tabulation?

A. That would be any expense incidental to the compiling of freight rates, in brief, travelling expense, by the men in the traffic department, pertaining to freight rates.

Q. I believe you previously testified, Mr. Coyne, that as orders came in, the orders, as part of the routine, passed through the traffic department, isn't that correct?

A. That is correct.

Q. Will you explain in a little more detail what bearing the traffic department has on the invoicing operations

2601 of the Morton Salt Company?

A. The freight rates are vital factors in our invoicing operations in that each order goes through our

traffic department, is directed to a particular plant, and the freight rates are shown on that particular order.

Q. So that the freight rate figures used or produced or handled by the traffic department become eventually an integral part of the invoice itself, is that correct?

A. That is correct.

Q. And the traffic department also has the supervision of the routing of shipments by railroads according to traffic requirements and the freight rates involved, is that correct?

A. That is correct.

Q. And the entire activity of the traffic department is devoted to those types of operation?

A. It is.

Q. Now, with respect to tabulating expenses, will you state the type of items specified under that general heading, for the purpose of this tabulation?

A. That would include the supplies used in our tabulating department for I.B.M. tabulating equipment, that is, cards that are used in your key punch operations and the rental of the tabulating equipment from the I.B.M. That is it.

2602 Q. And the operations of the tabulating department, as I recall your previous testimony, are devoted entirely to the handling and tabulating of invoices and sales records of the Morton Salt Company, is that correct?

A. That is correct; and the work either increases or decreases, depending on the number of invoices that are issued.

Q. Now, with respect to the rent item, will you state on what basis the rent was specified by you for the purposes of this tabulation?

A. The floor space occupied by the various departments in Chicago, Washington, New York, New Orleans and Nashville offices; that would be the amount of space that is used for the invoicing operations.

Q. Are there any offices of the Morton Salt Company located in the Chicago territory and in the territory of the Chicago associated offices whose rent for floor space, either in whole or in part, is not included under the rent tabulation just referred to?

A. Yes.

Q. Will you designate what those are?

A. Well, that would be any office in connection with

a warehouse. It would not include plant offices. Such offices as Milwaukee, Detroit, Minneapolis, would not be included.

Q. And is the proportionate rent or any rent at the Port Huron Plant, so far as the clerical office is concerned, included in this tabulation?

2603 A. It is not.

Q. Is that also true of Manistee and of the other plants of the Morton Salt Company?

A. They are not included.

Q. So if the offices of the Morton Salt Company are either plant offices or their offices are located in warehouses, the rent factors of those offices have been excluded for the purposes of this tabulation, is that correct?

A. That is right.

Q. In determining the amount of rent for the Chicago office of the Morton Salt Company, was a percentage taken on the basis of square footage of the total area?

A. Yes.

Q. And what percentage was used, if you know, Mr. Coyne? Or would that have to come from the accounting department?

A. It will have to come from Mr. Connor of the accounting end.

Q. But when you ask for figures on rent for the Chicago office, you specify only the proportionate amount allocable on a square foot basis to the invoicing staff and sales staff?

A. That is right.

Q. Now, immediately below the itemized tabulation of "Invoicing Operations", Mr. Coyne, on Respondent's Exhibit No. 22, appears the figure $119,422, identi-

2604 fied as "Total Invoices to all Customers". Is that the same figure to which you testified under the "Cost Computation" on Respondent's Exhibit No. 21, identified on that exhibit as "Total Invoices Issued for the Period"?

A. It is the same.

Q. Referring to the next item below "Invoicing Operations" on Respondent's Exhibit No. 2, being the figure $2.65¼, will you state how that figure was arrived at? Was it arrived at in the manner shown in the parenthetical computation immediately under the identifying name, "Cost Per Invoice"?

A. It was.

Q. Referring now to the tabulation "Credit Operations" on Respondent's Exhibit No. 22, did you specify the items to be included in this exhibit, beginning with the item "Salaries" and ending with the item "Bad Debts"?

A. Yes.

Q. Were the figures with respect to that particular tabulation obtained by you or obtained under your supervision, or obtained from the accounting department of the Morton Salt Company?

A. Obtained from the accounting department of the Morton Salt Company.

Q. And they were furnished pursuant to your request on the items specified by you, is that correct?

A. That is correct.

2605 Q. With reference to the first item under "Credit Operations", will you state the basis on which the salary item was included.

A. It was included on the basis of salaries of the individuals concerned with our credit and collection operations.

Q. And having specified those items, the figure of $25,277.38 then came from the accounting department at your request?

A. That is correct.

Q. With respect to the "Social Security" item appearing next, was that specified with respect to the salary item just preceding it on that computation?

A. Yes.

Q. Referring to the next item, "Legal Collection Expenses", will you state on what basis that was included in the computation?

A. That would be for all outside legal collection expenses, for attorneys or collection agencies that might be employed in the collection of delinquent accounts.

Q. You referred to "outside collection expense". Will you describe what you mean by that?

A. I mean attorney's fees or such items as that, that would be incurred in pursuing the collection of delinquent accounts.

Q. Referring to the last item under the "Credit
2606 Operations" tabulation, Mr. Coyne, being "bad debts", will you state the grounds on which you specified that item for that tabulation?

A. That would be the bad debts for the period.

Q. And they were included on the ground of being an expense of the credit department, is that correct?

A. That is correct.

Q. Referring to the item next appearing under the tabulation of "Credit Operations", identified as "Total Invoices to Carload Customers", being the figure 97,827, will you state what that figure represents and how it was arrived at?

A. That would be the total number of invoices issued to customers other than those classified in the quantity discount grouping.

Q. Now, by "quantity discount grouping", do you mean customers classified as 50,000 case customers? Would they be included in the quantity discount group?

A. They would be.

Q. And customers classified as $50,000 discount customers, would they be included in that grouping?

A. Yes, they would.

Q. And 5,000 case customers, would they be included in that grouping?

A. They would.

Q. And customers receiving carload discounts, would they be classified in that grouping?

2607 A. They would not.

Q. So that the figure 97,827 would represent the number of invoices which were issued to all customers for the period designated, exclusive of the customers enjoying any one or more of the three types of discount just referred to exclusive of carload discounts, is that correct?

A. That is correct.

Q. How was that figure arrived at, Mr. Coyne?

A. By tabulation and actual count of the invoices?

Q. The figure $0.41 appearing next under that was arrived at in the manner indicated by the parenthetical computation on the exhibit, is that correct?

A. That is correct.

Q. Will you state why the figure $40,295.97, being the total credit operation costs shown on the exhibit, was divided by 97,827, being the invoice count just referred to, rather than by the total invoices issued to all customers including the three types of quantity discount customers?

A. Those, the three types of quantity discount customers, do not receive the service. It is only the groupings shown here that that expense would apply to.

Q. Now, by "receive the service", will you explain what you mean by that?

A. I mean in the actual credit operations. Those orders that are received from the quantity discount cus-
2608 tomers, our records prove and show we have never had any credit losses there, and therefore those particular accounts, as they pass through the credit department, there is only a spot check made occasionally of those particular accounts, due to the fact that at times in their remittances they might omit an invoice or some such thing as that.

Q. Then, from your testimony, do I understand correctly that credit investigations and credit losses and expense, as such, are not employed or incurred by the Morton Salt Company with respect to those types of quantity discount customers?

A. That is correct.

Q. That in its cost records, then, the Morton Salt Company regards the cost of its credit operations as a cost against its non-quantity discount customers only, is that correct?

A. That is correct.

Q. Mr. Coyne, with respect to the items which you specified under "Invoicing Operations", did you specify those items with respect to the Chicago office and also with respect to all the associated billing offices?

Mr. Haslett: What exhibit are you referring to?

Mr. McBride: Referring now to Respondent's Exhibit No. 22.

The Witness: Yes, with the exception of the traffic and tabulating expense, of course, they are handled
2609 in Chicago.

By Mr. McBride:

Q. And also with the exception of the specific exceptions you noted on the rent item, is that correct?

A. That is correct.

Q. (Continued) With respect to the other items specified, the other offices as well as the Chicago office, for inclusion in that tabulation?

A. That is correct.

Q. Now, is the same thing true with respect to the credit operations, Mr. Coyne?

A. That is true.

Q. So that the credit operations and the invoicing

operations, except for the specific exceptions which you have noted in your testimony of Chicago and all associated billing offices, are reflected in Respondent's Exhibit No. 22?

A. That is correct.

Q. Are there any expenses involved in the invoicing operations of the Chicago or any of its associated offices not reflected on Respondent's Exhibit No. 22?

A. No.

Trial Examiner Purcell: Let me have that question, please.

(The question above referred to was read by the Reporter.)

Mr. Haslett: I don't think it is within this witness' 2610 knowledge to testify to such facts.

Trial Examiner Purcell: Do you object?

Mr. Haslett: Yes, I am objecting.

Trial Examiner Purcell: The objection is overruled; and if you have any such thought, you can bring it out on cross-examination.

By Mr. McBride:

Q. Are there any expenses in connection with the credit operations of either the Chicago office or any of its associated billing offices not reflected on Respondent's Exhibit No. 22?

A. No.

Mr. Haslett: May I have the same objection to that question and answer?

Trial Examiner Purcell: Same ruling.

By Mr. McBride:

Q. Are any invoicing expenses or credit expenses of the Kansas City office, the Dallas office or the San Francisco office reflected in Respondent's Exhibit No. 22?

A. They are not.

Q. Referring now to Respondent's Exhibit No. 23, will you state who specified the items to be included on that exhibit?

A. Those were specified by me.

Q. And from whom did you obtain the figures shown opposite each of the items on that exhibit, referring 2611 now to the figures beginning with $197,772.16 and ending with $438,423.42.

A. They were furnished by Mr. G. L. Connor, our auditor.

Q. Pursuant to your request in connection with the preparation of this exhibit, is that correct?

A. That is correct.

Q. On what basis was the first item, "special advertising expense on Blue Can" included in this tabulation?

A. That expense would pertain entirely to items employed for the promotion of the Morton's Blue Package salt.

Q. And by "items employed", you mean store cards and counter display cards, and so forth?

A. Yes, advertising novelties, balloons or various items.

Q. On what basis was the next item specified, referring now to "Salaries of Specialty Salesmen"?

A. Only those salesmen employed in that capacity, specialty or retail salesmen.

Q. And in specifying that figure, you excluded all other types of salesmen, is that correct?

A. That is correct.

Q. In specifying the next item of "Social Security on above salaries", did you specify Social Security only on specialty salesmen's salaries?

A. Yes.

Q. With respect to the fourth item, "Expenses of Specialty Salesmen", will you describe on what basis that was specified?

2612 A. That was on the basis of the salaries of the men included under the "Salaries of specialty salesmen".

Q. And the expenses of all other salesmen were excluded in your specification?

A. All others were excluded.

Q. Are there any other items of expense which you know of, having to do with specialty sales work, which are not included in the item reflected by Respondent's Exhibit 23?

A. There are no other items that I know of.

Q. Referring now to the next figure appearing under that tabulation, identified as "Total sales to customers other than those receiving the 15¢ discount", will you state where that figure came from?

A. From actual tabulation of the invoices, excluding the purchases made by the 50,000-case customers.

Q. When you say excluding the sales made to the

50,000-case customers, do you have reference to the customers appearing on Respondent's Exhibit 19?

A. I do.

Q. And the sales reflected on that exhibit, Respondent's Exhibit 19, are not included in the figure to which you have just testified on Respondent's Exhibit 23, is that correct?

A. They are not included.

Trial Examiner Purcell: Are the $50,000 customers included?

2613 The Witness: No.

Mr. McBride: The $50,000?

Trial Examiner Purcell: They are not included, the $50,000? Are they included?

The Witness: Oh, yes, they are included.

Mr. Haslett: May we go off the record?

Trial Examiner Purcell: Off the record.

(There was a discussion off the record.)

Trial Examiner Purcell: On the record.

By Mr. McBride:

Q. By way of clarity, Mr. Coyne, regarding the Trial Examiner's last question, did you mean that the sales of the $50,000 customers were all included, or that the sales of the customers appearing on Respondent's Exhibit 18 are included in the figure $6,226,532.44?

A. The sales on Exhibit No. 18 are included.

Q. But the sales on Respondent's Exhibit 19 are excluded from the figure in question?

A. That is correct.

Q. Referring now to the final figure on Respondent's Exhibit 23, Mr. Coyne, being the figure .0704, will you state how that figure was arrived at?

A. By dividing the item $438,423.42, which is the total expense, by $6,226,532.44.

Q. And both of those figures appear on Respond-

2614 ent's Exhibit 23, is that correct?

A. Yes.

Q. Were all specialty sales figures of Kansas City, Dallas, and San Francisco excluded from Respondent's Exhibit 23?

A. They were.

Q. The exhibit does reflect, however, does it not, Mr. Coyne, the specialty sales expenses of Chicago and associated billing offices for the period in question?

A. It does.

2615 Room 118, Sherman Hotel,
Chicago, Illinois,
Monday, October 12, 1942.

Met, pursuant to adjournment, at 10 a. m.

Before:

James A. Purcell, Trial Examiner.

Appearances:

John T. Haslett, Esq., Attorney for the Federal Trade Commission.

L. H. McBride, Esq., 310 South Michigan Avenue, Chicago, Illinois, attorney for respondent.

2616 Mr. McBride: Mr. Examiner, I have not finished with the direct examination of Mr. Arnold J. Coyne, a witness on behalf of the respondent who was still on the stand at the close of the hearing last Friday, but, with the permission of the Trial Examiner and of counsel for the Commission, I would like to interrupt Mr. Coyne's testimony and called as the next witness for the re-
2617 spondent Mr. D'Miller, the president of N. R. O. G., whose available time is quite limited in view of his duties.

Trial Examiner Purcell: Is that satisfactory, Mr. Haslett?

Mr. Haslett: That is satisfactory, sir.

WILLIAM M. D'MILLER was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. McBride.

Q. Mr. D'Miller, will you state your name and address for the record, please?

A. William M. D'Miller. Do you want the office address?

Q. Yes, your office address.

A. Office address is 805 Merchandise Mart, Chicago, Illinois.

Q. What is your occupation, Mr. D'Miller?

A. President of the National Retailer-Owned Grocers, Incorporated.

Q. Are you the same Mr. D'Miller who testified as a witness on behalf of the Commission earlier in the same hearing?

A. I am.

Q. How long have you been president of N. R. O. G., Mr. D'Miller?

2618 A. Seven years.

Q. And during that period have your offices been in Chicago, Illinois, the head office of N. R. O. G.?

A. The head office is Chicago and branch offices in New York and San Francisco.

Q. Prior to your becoming president of N. R. O. G., will you state your experience in the wholesale grocery business or in the grocery business generally?

A. I graduated in the year 1902. I had an attack of rheumatism and it prevented my continuing in the medical school at Pennsylvania. I then went into the retail grocery business at the end of 1903, and have been in the retail and wholesale business up to the present time, for a period of 39 years.

Q. During part of that period did you operate either retail stores or wholesale houses of your own?

A. For the first year I worked in the retail business with my father; the second year I was an owner; and the third year started a retailer-owned organization at Lancaster, Pennsylvania, where I stayed for 11 years.

Then I went and started a new one known as the Lehigh Wholesale Grocery Company, in Allentown, Pennsylvania, where I was for 18 years.

During part of those 18 years I was president of National Retailer-Owned Grocers, and gave them
2619 half time. For the past three years it has been full time, in Chicago.

During those 18 years that I operated the Lehigh Wholesale Grocery Company, I also started an organization of six other retailer-owned grocers. One was Wyoming Wholesale Distributing Company at Wilkes-Barre, Pennsylvania. One was the Minersville Wholesale at Minersville, Pennsylvania; the Yorktown Wholesale Grocery Company at York, Pennsylvania; Sunbury Wholesale Grocery Company at Sunbury, Pennsylvania; and Progressive Merchants, Lehighton, Pennsylvania.

Q. During your experiences which you have just described, Mr. D'Miller, have you had the duties from time to time or during the whole time of purchasing grocery products and of merchandising the same?

A. That was the duties, yes, sir.

Q. Included in those items were there salt items which you purchased and merchandised in the course of your experience?

A. Yes, sir.

Q. Mr. D'Miller, can you estimate the number of individual items carried by the average wholesale grocer, exclusive of fresh vegetables and items of that type?

Mr. Haslett: I object to that question as being irrelevant and immaterial to the issues in this case. It makes no difference how many items of wholesale groceries are
2620 concerned. We are interested in salt.

Trial Examiner Purcell: I don't know, it seems to me, if my recollection serves me, Mr. Haslett, that that was gone into in the Commission's case, as to the number of the various items. If I recall, the averages ran 22, 23 hundred. I think you brought that out by several witnesses.

Mr. Haslett: I beg to differ with the Examiner. I never asked that question in this record.

Trial Examiner Purcell: It was brought out.

Mr. Haslett: It was brought out by Mr. McBride over my objection.

Trial Examiner Purcell: All right, sir, I will overrule your objection in this instance. It may be very material to the defense. In any event, I can't see that it will do any harm. You may answer, sir.

A. It depends on the location of the retailer-owned house as to the number of items they carry.

I know of instances where there is 6,000; I know of them where it is as low as 2,000. A 6,000 instance would be, for instance, on the Pacific Coast, where they carry all kinds of liquor, different sizes, different brands, all kinds of wines, different sizes, different brands.

Therefore, they would have many more items than we have on the Atlantic Coast or in the Middle West.

By Mr. McBride:

2621 Q. Would there be that same situation, Mr. D'Miller, with respect to independently owned wholesale houses?

A. Yes, sir.

Q. It would depend entirely, then, upon their location and the scope of activity of each house?

A. And as to the size of the house. It is advisable in some cases to reduce size. It depends on the distribution of your members.

Q. Can you testify, Mr. D'Miller, as the approximate number of salt items that would be handled by a wholesale house, referring now to all salt items of all producers?

A. I don't quite understand your question, the number of items. We divide salt, in buying it and selling it, we divide it into table salt, agricultural salt, and package salt. There are various sizes of table salt and various sizes of agricultural salt.

When you come down to items, there is one that will retail at ascertain price, and that is the end of it.

Q. If I may reframe my question, in view of your answer:

Taking all the various items and various sizes of table salt, agricultural salt, and any other grouping that you might use in your own warehousing program of N. R. O. G., could you estimate the number of total salt items that are carried, on the average?

A. Not over 10. Some places run down as low as 6 or 5.

2622 Q. And of those 10 or of the 6 or 5, according to the warehouse member in question, only a portion of those would be table salt items, as you would describe them, is that correct?

A. Not more than half, if that.

Q. When you refer to table salt items, Mr. D'Miller, will you describe what types of salt you mean, primarily?

A. I mean the round package salt and the little cotton bag salt.

Q. And the other types of salt, according to N. R. O. G. classification, for its purposes, would be agricultural or farm salt or some salt other than table salt, is that correct?

A. That is right.

Q. From your knowledge of the general wholesale business, Mr. D'Miller, would the same number of items, or ratio, obtain generally with respect to independent wholesalers as you have testified to with respect to wholesale members of N. R. O. G.?

A. I would think so.

Trial Examiner Purcell: What was the question, Miss Reporter?

(The question above referred to was read by the reporter.)

By Mr. McBride:

2623 Q. Now, in terms of dollar volume, Mr. D'Miller, referring to wholesale members of the N. R. O. G., can you estimate the percentage of the total dollar volume of the average wholesale member of N. R. O. G., which is accounted for by all salt items, not just table salt, but all salt items?

A. It would be very, very, very small. I would risk a guess—

Mr. Haslett: We don't want any guessing, Mr. D'Miller.

A. Not over one-tenth of one per cent.

Mr. Haslett: What do you base that on?

Trial Examiner Purcell: Mr. Haslett, if you please.

Mr. McBride: I think I have a right to examine at this time.

Trial Examiner Purcell: I have called Mr. Haslett's attention to it. Mr. Haslett, you may reserve your questioning for cross-examination.

Mr. Haslett: I object to this line of examination.

Trial Examiner Purcell: Then put it in the form of an objection. Do not break into counsel's examination with questions. Do you make an objection?

Mr. Haslett: Yes, sir, I note my objection to this type of testimony.

Trial Examiner Purcell: Objection overruled. You
2624 may proceed.

By Mr. McBride:

Q. Then the table salt items, referring to those specifically, insofar as wholesale members of N. R. O. G. are concerned, would account for even less than one-tenth of one per cent of the total dollar volume of the average wholesale N. R. O. G. house, is that right?

A. I said one-tenth of one per cent.

Q. I am referring now to the table items alone. It would be still less?

A. That is right. That is what I am figuring.

Q. With respect to retail stores, Mr. D'Miller, can you estimate, from your experience, the approximate number

of items in the dry grocery line that would be handled by the average N. R. O. G. retail outlet?

Mr. Haslett: I object to that on the same grounds. It is immaterial to the issues in the case.

Trial Examiner Purcell: Objection overruled.

The Witness: Will you please repeat that question for me?

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the reporter.)

A. 2,000.

By Mr. McBride:

2625 Q. And can you estimate from your experience, Mr. D'Miller, referring still to N. R. O. G. retail outlets, as to the total number of all salt items, table items, agricultural items, farm items, and so forth, that would be handled by the average N. R. O. G. retail outlet?

Mr. Haslett: I object to that, Mr. Examiner. This isn't the best evidence that can be brought before the Commission, having estimates and guesses of Mr. D'Miller. I am sure he doesn't want to have his testimony in the record being based upon estimates and guesses. He is in the wholesale grocery business and he knows nothing about the retail end, so far as I know anything about his qualifications up to this time.

I think the best evidence is to get some figures and bring them in and show us these things, and not have the estimates and guesses of the witness.

Trial Examiner Purcell: I quite agree with you on that, Mr. Haslett, but if this is the way Mr. McBride wants to present his case and this witness is willing to go on the stand and testify by guess and estimate, why, that is entirely up to the defense, I take it. The objection is overruled. You may proceed.

Mr. McBride: Will you read the question, please?

(The question above referred to was read by the reporter.)

2626 A. Five.

By Mr. McBride:

Q. And of those five items, approximately how many would be table salt items, Mr. D'Miller?

A. Three.

Q. Would that same number or ratio of numbers with

respect to total dry grocery items and total salt items obtain with respect to the average independent retailer? By "independent retailer", I mean retailers not associated with the N. R. O. G.

A. Yes, sir.

Q. In terms of dollar volume, Mr. D'Miller, approximately how much of the total dollar volume of the N. R. O. G. retail units are accounted for by the dollar volume of all salt items ~~handled,~~ referring now to the five salt items to which you have just testified?

Trial Examiner Purcell: Before you answer that question, go back to the last question and answer, please, Miss Reporter, and read it—rather, I mean the next to the last question and answer.

(The question and answer above referred to were read by the reporter.)

Trial Examiner Purcell: Are you testifying of your own knowledge with regard to the preceding question, or is that also a guess or an estimate?

Mr. McBride: If the Examiner please, let me 2627 interfere just a moment before the witness answers.

I object a little bit to the characterization by both counsel for the Commission and the Examiner, to their characterizing these as guesses.

Mr. D'Miller has described 39 years of experience in the grocery business and it will be observed from the record that all, or a substantial portion of it, was spent in the retail end of the grocery business, both with his father and by himself, and later in connection with the organization of retail outlet companies, and finally with N. R. O. G.

Now, I think even judicial notice of any kind would know that on maybe Thursday of 1935 the same number of items of any line might not equal the same numbers on Friday of some month in 1952.

Now, this gentleman has qualified as a man who has had years of experience in both the retail and wholesale grocery business. He himself, simply for lack of another word, may use the word "guess", but most certainly he is predicating it upon his experience.

Trial Examiner Purcell: Mr. McBride, you have qualified your witness, as you have said, but your question, which I am now attempting to straighten out in my own mind, was directed to all other retailers, meaning all

others, I assume, in the United States, other than N. R. O. G. members.

2628 Mr. McBride: That is right.

Trial Examiner Purcell: That is a pretty broad question to ask this witness and I want to know from the witness if that answer was made of his own knowledge or is it one that he answered like before, "I think so".

Now, if my characterization that it was a guess or an estimate was wrong, I withdraw it. I still wish to know if the witness is testifying of his own knowledge as to that particular question.

The Witness: By way of explanation, National Retailer-Owned Grocers is made up of 116 warehouses distributed in 37 States of the Union, owned by 19,712 independent retail grocers. They own their wholesale warehouse. It is a retail proposition. Therefore, in merchandising, we figure what the other stores carry so that we know what to merchandise, and that is what I based that on, sir.

Trial Examiner Purcell: Now read the last question back to the witness, the one that was unanswered, please.

(The question above referred to was read by the reporter.)

A. I wouldn't know that.

By Mr. McBride:

Q. Would you have any opinion as to the approximate amount, Mr. D'Miller?

2629 A. I wouldn't want to—20,000 is enough; you know there are 500,000 retailers. It is pretty hard to account for the other 480,000 of them. When we merchandise, we merchandise differently on the Atlantic Coast than we do on the Pacific Coast and different in the Northwest than we do in the Middle West, so when we advertise, we are doing about the same thing that our competitors are doing.

Therefore, from that, I say they are carrying practically the same numbers we are, or we wouldn't be advertising the same thing; but to go into the store and say they do or don't, that is something else. That is what I am led to believe from my observations of their advertising, sir.

Trial Examiner Purcell: Well, that is the underlying reason why we had our last colloquy.

By Mr. McBride:

Q. Do you have any opinion, Mr. D'Miller, now isolating sections of the country, as to what the dollar volume percentage of all salt items might be to the total dollar volume of all dry grocery items, referring still to N. R. O. G. retail units only in the New Orleans and Louisiana territory?

Mr. Haslett: I object to that. I don't think that question is susceptible of an answer. Will the Examiner listen to it?

Trial Examiner Purcell: I have listened to every
2630 question that has been put in this case. Off the record.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Will you read the question, Miss Reporter?

(The question above referred to was read by the reporter.)

Trial Examiner Purcell: Now, Mr. D'Miller, after discussion between counsel and the Examiner off the record, you may answer.

A. We have no units in either one of the two places, therefore, I would not be in a position to answer.

By Mr. McBride:

Q. Would you be in a position to answer the question, Mr. D'Miller, with respect to your operations in southeastern United States, having reference to the Georgia-Florida market?

A. Not Georgia and Florida, no, sir.

Q. Does the N. R. O. G. purchase salt from the Morton Salt Company, if you know, Mr. D'Miller?

A. Yes, sir.

Q. Can you specify the items that are purchased from time to time from the Morton Salt Company?

A. The items?

Q. Yes.

A. Various packages for the table and bulk salt,
2631 as we term it. Packages and cotton bags for the table and burlap and bulk for agricultural purposes.

Q. With respect to the table salt items, would that include Morton's Blue Package, the free running and the iodized?

A. It would, sir.

Q. Do you know whether or not the N. R. O. G. receives any quantity discount on any of those purchases from Morton Salt Company?

Mr. Haslett: I object to that. Mr. Examiner, that question has been asked and answered before on examination by me I know three times, and it is in the record as an exhibit. I have no objection, if Mr. McBride wants to put it in again, I guess.

Trial Examiner Pureell: You may answer, Mr. Witness.

A. We do.

By Mr. McBride:

Q. Do you know how the N. R. O. G. is invoiced or billed by the Morton Salt Company with respect to its purchases of the Morton Salt Company?

A. They invoice us in duplicate and attach a credit memorandum covering the individual purchasers.

Q. What happens to the credit memorandum, Mr. D'Miller, that you have just testified to?

A. It is deducted when we pay Morton Salt
2632 Company and held by N. R. O. G.

Q. When you say "when we pay", do you mean the Chicago office?

A. When N. R. O. G. pays Morton Salt.

Q. And then you say it is held by N. R. O. G. Will you explain that? Do you mean held at Chicago, or how do you mean that?

2633 A. Held in Chicago. N. R. O. G. assumes the credit responsibility for all salt to its members, and the cost of billing and handling the account is deducted from the credit memoranda, by N. R. O. G., and the balance, whatever it is, is subject to fluctuation. It is later on passed on as an earning to the purchaser.

Q. By purchaser, do you mean the wholesale member of the N. R. O. G.?

A. I mean the wholesale warehouse for their retailers.

Q. When the invoice is first received by the N. R. O. G. office at Chicago, is the wholesale member billed immediately for the salt purchased, or within some specified time?

A. We try to get out the billing as quickly as possible.

Q. And take the blue package, for example, Mr. D'Miller, for which the price is $1.50 in carload shipments, would the wholesale member be billed at that time for $1.50, or for $1.50 less 10 cents discount, or on what basis?

A. He would be billed exactly the face of the invoice, $1.50.

Q. Then the 10 cent discount, less any handling charges to which you referred, would not be distributed except in the form of earnings at a subsequent date, is that correct?

A. Absolutely, sir.

Q. Mr. D'Miller, in your experience in the grocery business, do you know what the average mark-up
2634 would be on the dry grocery items handled by wholesale grocery houses, having reference only to N. R. O. G. members, for the moment?

A. Three to eight per cent, depending on the amount of service rendered to the retailer.

Q. And in the three to eight per cent, you are referring to the average mark-up on all items handled by the houses, is that correct?

A. Yes, on over-all.

Q. Now, with respect to other wholesale grocery companies, aside from members of N. R. O. G., do you have any opinion as to what the mark-up might be on the over-all line in those houses?

A. Larger.

Q. Substantially larger?

A. It is very evident, if you read the Chicago Tribune this past Saturday, because when they allocate the percentages—

Trial Examiner Purcell: Now, I will have to interrupt the witness.

Mr. Haslett: I think the question has been answered. He said larger.

Mr. McBride: Why the interruption. I don't believe I understand. No objection has been made to the answer.

Trial Examiner Purcell: Well, Mr. McBride, the
2635 answer is argumentative. It refers to some evidence which is not before the Commission, in addition to which I am charged with the duty, as well as yourself, of keeping this record within reasonable limits.

Mr. McBride: Quite true. But no objection has been made, and the reference is simply illustrative, and is offered by the witness as substantiating evidence. I think he should be permitted to answer. It doesn't follow that he is basing his answer on what he read in this week's Tribune, or a week ago's Tribune.

Trial Examiner Purcell: We will get into a great many

arguments, I fear, if we attempt to put in this kind of evidence.

Mr. McBride: I think the witness should be permitted to answer until counsel objects to it.

The Witness: May I ask a question off the record, please?

Trial Examiner Purcell: Off the record, Miss Reporter.

(Discussion off the record.)

Trial Examiner Purcell: On the record.

Mr. McBride: Will the Reporter read back the witness' last answer, please?

(The answer above referred to was read by the Reporter.)

2636 Mr. McBride: I should like to have the witness permitted to continue his answer, Mr. Examiner.

Trial Examiner Purcell: I think the witness has fully answered already, without going into newspapers reports, and advertising, and so forth.

Mr. McBride: Then do I understand, just to make the record clear, that the Examiner is ordering the witness' answers to be halted at this point without an objection of counsel for the Commission?

Trial Examiner Purcell: Now, we had a discussion off the record. The witness may proceed with his answer. Mr. D'Miller, you may proceed with the answer.

Mr. Haslett: Mr. Examiner, I am going to object.

Trial Examiner Purcell: Hold your objection for a moment, will you please?

The Witness: Just where am I.

Mr. McBride: Read the answer again, will you, please?

(The answer above referred to was read by the Reporter.)

The Witness: The Retailer Owned was allocated the lowest of all wholesale distributors in the food industry?

Mr. Haslett: I move to strike out the last answer as not being responsive to the question.

Trial Examiner Purcell: I will hear from you,

2637 Mr. McBride.

Mr. McBride: I have no comment to make.

Trial Examiner: All right, the motion to strike is granted.

By Mr. McBride:

Q. Mr. D'Miller, when you say "substantially larger" do you have in mind five per cent, ten per cent, or twenty

per cent larger than the mark-up to which you testified regarding the wholesale members of N. R. O. G.?

A. From two to five per cent.

Q. Higher than the N. R. O. G.?

A. That is true.

Q. Now, with respect to the wholesale members of N. R. O. G., in your experience, do you know whether or not that average mark-up of from three to eight per cent obtains with respect to each individual item, or is that the average on all dry goods grocery items?

A. That is the average.

Mr. Haslett: Would you read that question and answer back?

(The record as above referred to was read by the Reporter.)

The Witness: Some things are sold at absolute cost. Other things may carry as high as ten per cent, seasonable items, but the average will come down to as I 2638 stated.

By Mr. McBride:

Q. Is there any particular type of item, Mr. D'Miller, handled by the wholesale members of N. R. O. G., which might be sold at cost?

A. Different sections, different items, but in all cases, nationally advertised items are used as leaders, and sold at cost, or very near thereto.

Q. Do you have any estimate as to the approximate number of items which would fall into that group, in comparison with the total items handled by a wholesale member of N. R. O. G.? By that I mean, would the items sold at cost, or nearly cost, constitute 10 per cent, or 50 per cent, or 70 per cent of the total line?

A. Not over 5, if that.

Q. That might vary from area to area, and from time to time?

A. Yes, sir.

Q. Mr. D'Miller, in determining the profits of a wholesale warehouse, a member of N. R. O. G., and by profits, I mean the net profits, can you state what are the various elements and factors which would be taken into consideration?

A. Repeat that question, please.

(The question above referred to was read by the Reporter.)

2639 Mr. Haslett: I am going to object to that question. I don't think it is within this witness' knowledge to answer the question. If I understand the set up of N. R. O. G., they have nothing to do with the individual wholesale outlets that are owned by the retailers. This is the National Headquarters. It is a purchasing office for the wholesalers.

Mr. McBride: Mr. Examiner, I suppose it is quite obvious that Mr. D'Miller is not an isolationist that never moved out of his swivel chair in Chicago. As president, he must be quite familiar with the operations of N. R. O. G., and, in return, with those of thousands of retail owners.

Trial Examiner Purcell: You are not asking me to take official notice of his gyrations around the country, are you?

Mr. McBride: Not at all, but I think the president of any company can testify as to the factors that are considered by the various units in his Company's organization.

Mr. Haslett: Mr. Examiner, this is not a company in the sense in which the Morton Salt Company is. This is a cooperative group, with wholesalers owning their individual plants, and also the retailers, and this is a general association, and they have a general office in Chicago;

2640 of which Mr. D'Miller is the head.

Mr. McBride: I have nothing further to say.

Trial Examiner Purcell: Objection sustained.

By Mr. McBride:

Q. Mr. D'Miller, you testified, I believe, that from time to time you had operated your own retail, or wholesale house, is that correct?

A. Yes, sir.

Q. In figuring the profits of your proprietorship, or company enterprise during the course of your experience, what factors or elements did you take into consideration, referring now to net profits.

Did you simply take into consideration the purchase price and the resale price, or are there other elements?

A. There are other elements. We tried to sell goods at the lowest penny and stay in the black, and were perfectly satisfied as a profit, if we had part of the cash discount.

Q. Would the factor of whether or not credit is al-

lowed, or not allowed in the operations of a wholesale house, be an element in the net profit computation?

A. Absolutely.

Q. Would the factor of whether or not delivery service is or is not granted be another factor?

A. It would be a very vital factor.

2641 Q. And would the factor as to whether or not salesmen were employed, or whether it was just a cash and carry house, be a factor?

A. Very much so.

Q. Would the turn-over or volume during an annual period, or any other fiscal period, be another factor?

A. Yes, it makes black or red figures.

Q. I assume, also, that administrative overhead and cost, the amount of it, would be a factor in the net profit computation, is that correct?

A. Yes, sir.

Q. From that, would it be true, Mr. D'Miller, that the net profit or net loss of a given wholesale house could not be ascertained simply by knowing what it paid for its goods, and what it sold it for?

A. Absolutely right.

Mr. Haslett: Well, now that that storm of questions and answers is over, I am going to move that all the questions and answers be stricken as being irrelevant, incompetent and immaterial to the issues in this case. The fact that he has all these various elements that make up the profit and loss sheet of any particular firm, of which firm we know nothing, has nothing to do with the sale of salt. We are primarily interested here in the sale of salt, whether the discounts allowed by this company

2642 to N. R. O. G. are discriminatory discounts. We are not interested in other elements in the food industry.

Mr. McBride: If the Examiner please, I suppose my answer to that objection is quite obvious. For some six weeks, we listened to questions of counsel for the Commission, asked of I don't know how many witnesses, couched in terms of whether or not a particular witness on the stand would be injured in his business by the fact that somebody sold salt, or other items, at a differential less that what that particular witness was selling them for, or the type of question, the other type of question as to whether or not the fact that a competitor, so-called, purchased items, including salt, at a differential less than that of the witness on the stand, and then we had the collateral

series of questions by counsel for the Commission with respect to whether or not that witness might be injured by the fact of a greater or less differential.

Now, I am entitled, by anything that I know of under the Robinson-Patman Act defense, on the question of injury to competition, to show that it is a mathematical and accounting impossibility to determine whether or not a witness has been injured by those types of questions. Mr. Haslett has made his case whatever it might be. The implications are obvious what he is trying to prove.

I propose to try to prove by this witness that
2643 that isn't enough, and that you can't show injury in that fashion. I think I am perfectly entitled to inquire into the fact that there are many, many other elements.

Mr. Haslett: Mr. Examiner, I concede that Mr. McBride can show, or make an attempt to show, through mathematical calculations, that competition hasn't been injured, but here he has a witness on the stand, and he asks his opinion, he asks for opinion evidence, and he asks for estimates and guesses. What would this do, what would happen if this would happen, and if that particular thing would happen. It hasn't one thing to do with this case. I think counsel, if he is trying to minimize the effect on competition, should certainly put into this hearing certain mathematical or arithmetical tabulations showing that as to particular customers, such discriminatory prices that have been proven in this case have not substantially injured competition, and that should be shown not through the mouth of a president of a large and great cooperative association. I think the question is highly objectionable, and the objection should be sustained.

Mr. McBride: I wish to be heard further, Mr. Examiner.

Trial Examiner Purcell: On the record?

Mr. McBride: I would like to be on the record, please.

2644 Trial Examiner Purcell: Let counsel's request be granted.

Mr. McBride: I am not required to accept counsel's suggestion of mathematical figures. That is item one.

Item two, Mr. D'Miller is not guessing on this. I have not asked for estimates. I have asked him what factors go into the determination of profits, and he has so testified.

Item three. Counsel for the Commission asked for opinion evidence in every single instance in his case, and received, according to his characterization, guess answers from those witnesses, without introducing in evidence, or attempting to, a single mathematical figure or statement.

I am entitled, by all that I know, to rebut the implications, whatever they might be, of that testimony on behalf of the Commission.

Mr. Haslett: I challenge the last statement of counsel, as to its verification and truth. I did not ask for opinion evidence. I put into the record numerous invoices showing the prices at which various customers were sold, and the prices at which competing customers were sold, and showing the lower price. I asked, as a result of that, what effect it would have upon the particular customer's business, and got answers to that effect. I didn't ask any question about any other item other than salt.

2645 Mr. McBride: I will get to salt on the next question, if counsel will be patient.

Mr. Haslett: We are interested in this question.

Mr. McBride: That is precisely the point. You think that the only question in here is the sale price, and the purchasing price, and I want to show that isn't enough. I am entitled to show it.

Mr. Haslett: But not through this witness.

Trial Examiner Purcell: The motion to strike, Mr. Haslett, is directed as to all of the testimony of this witness?

Mr. Haslett: All of the testimony of this witness regarding the various factors that would enter into the question.

Trial Examiner Purcell: That was only the last question.

Mr. Haslett: The last several questions.

Trial Examiner Purcell: The last several questions. The motion to strike, Mr. Haslett, will be overruled. Is there a question pending?

Mr. McBride: No.

By Mr. McBride:

Q. Mr. D'Miller, if a competitor of an N. R. O. G. wholesale house were selling Morton's Blue Package for $1.65 a case, while an N. R. O. G. house was selling

2646 that same package at $1.55 a case, would it necessarily follow that the competitor of the N. R. O. G. was

making a greater net profit on that item than the N. R. O. G. house, merely because of the differential between the selling prices of the two?

A. I will have to have that question repeated, please.

Trial Examiner Purcell: Read the question, Miss Reporter, please.

(The question above referred to was read by the Reporter.)

The Witness: It would not.

Mr. Haslett: I object to that. The question is not susceptible to an answer for this reason, that there is no basis laid as to what price was being paid for it.

Trial Examiner Purcell: That is what I attempted to ask counsel, if he had not neglected to put in a necessary element, but on further consideration of the question as put, it would lead me to think that it was susceptible of an answer, and that would be predicated, according to my mind, perhaps on the difference of business administration, or what-not. The cost of overhead, the overhead cost of selling, or what-not are considered.

Mr. Haslett: Mr. Examiner, that wasn't put into the question at all. He asked if one was selling at $1.55 and the other at $1.65, would one make more than another.

Trial Examiner Purcell: The question was 2647 "would it necessarily follow" that the one sold at a higher figure was making a greater net profit than that of the competitor who sold at a lower figure.

Mr. Haslett: I think the necessary element is out of the question, as to what price the product was purchased.

Trial Examiner Purcell: At first blush it so struck me. Your objection is overruled.

Mr. Haslett: I make a motion to strike out his answer, sir.

Trial Examiner Purcell: On what ground do you make that motion?

Mr. Haslett: On the same grounds, that the answer is not in accordance with the question, and the answer does not follow. The question is not susceptible of an answer as it is predicated at the present time.

Trial Examiner Purcell: Well, the motion to strike is denied upon the same grounds that the objection to the question was overruled. I see no difference in the two. You may proceed.

By Mr. McBride:

Q. Mr. D'Miller, if a competitor of an N. R. O. G. wholesale house was purchasing Morton's Blue Package at $1.20, just to use an arbitrary figure, while the N. R. O. G. wholesale house was purchasing Morton's Blue Package at $1.40, would it necessarily follow from
2648 that fact alone that the competitor purchasing at $1.20 would make more net profit than the N. R. O. G. warehouse purchasing at $1.40?

A. Not necessarily.

Mr. Haslett: Would you read the question and answer back, please?

(The question above referred to was read by the Reporter.)

By Mr. McBride:

Q. Mr. D'Miller, if a competitor of an N. R. O. G. warehouse were selling the Morton's blue package at $1.60, while paying for it $1.35, making a differential of 25 cents between the purchase price and the resale price, while the N. R. O. G. warehouse was purchasing at $1.40 and selling at $1.60, making only a 20-cent differential between the purchase price and the resale price of N. R. O. G., would it necessarily follow that the competitor with a 25 cent differential made more net profit than the N. R. O. G. unit with its 20 cent differential?

A. It would not.

Q. That same thing would be true, would it not, Mr. D'Miller, with respect to the last questions, if the example used had been other types of Morton's table salt, instead of the blue package?

Mr. Haslett: What do you mean by the same thing, Mr. McBride?

2649 Mr. McBride: I will reframe it this way, Mr. Haslett.

By Mr. McBride:

Q. If I had propounded to you, Mr. D'Miller, the same questions as the last three, with respect to other table salt items, exclusive of the Blue Can purchased of Morton Salt Company, would your answer have been the same?

A. Yes, sir.

Mr. McBride: I believe that is all, Mr. Examiner. You may cross-examine.

Trial Examiner Purcell: We will have a five minute recess.

(A short recess was taken.)

Trial Examiner Purcell: The recess is over. Proceed, gentlemen.

Cross-Examination by Mr. Haslett.

Q. Mr. D'Miller, in your direct examination, you testified as to round package salt being a table salt. You didn't mean by that testimony that there were not square package salts?

A. The rounds and squares, both.

Q. Round and square?

A. Yes, sir.

Q. Now, you testified as to leaders of nationally 2650 advertised products. What do you mean by leaders?

A. A nationally advertised item that is known practically to every consumer, through the radio, newspaper, and magazine advertising, and those nationally advertised products are used as leaders.

Q. Well, are all nationally advertised products used as leaders?

A. Not all. Nor are the same ones used in all territories.

Q. Well, are they sold at cost?

A. Practically, yes.

Q. Or near cost?

A. That is right.

Q. What nationally advertised items do your association members use as leaders?

A. Swansdown Cake Flour is one. Jello is very, very prominent; Clorox is another one; sugar, as a rule, is sold by everybody for cost. Salt is used in a number of cases. Flour is used. It may be Pillsbury, or Gold Medal. It depends on the territory.

Q. But you wouldn't say that all nationally advertised products are sold as leaders?

A. Not all, no, sir. But I do say that the majority of leaders are nationally advertised products.

Q. I believe you stated that your association 2651 operates in a number of States throughout the United States?

A. Yes, sir.

Q. How many States did you say, sir?

A. 37.

Q. Some of those States have Fair Trade Acts, don't they, sir?

A. Some do.

Q. What about the price maintenance on many nationally advertised products under the Fair Trade Acts in many of those States?

Mr. McBride: If the Examiner please, I object to that as being obviously irrelevant here, as to what bearing the Fair Trade Acts have on any items. It isn't a question of observance of any law other than the Robinson-Patman Act, even with respect to salt, by any person, producer, wholesaler, or retailer.

Mr. Haslett: Mr. D'Miller has stated on his direct examination that many nationally advertised products are sold as leaders, at cost, or near cost. I want to know how that is done, taking into consideration the Fair Trade Acts in the various States.

Mr. McBride: I take it that if the Commission is interested in that, it has its own means of finding out. This is not the means of finding out.

Mr. Haslett: This is proper cross-examination.

2652 Trial Examiner Purcell: I don't see that it is Mr. Haslett. As Mr. McBride has pointed out, the only issue here is whether or not the Robinson-Patman Act, as amended, has been violated. I shall sustain the objection.

Mr. Haslett: I think the Examiner missed the significance of the question.

Trial Examiner Purcell: Perhaps so. I am willing to be set straight. Let me have the question read. My mind is always open.

(The question above referred to was read by the Reporter.)

Mr. Haslett: He has testified that numerous nationally advertised products are sold as loss leaders, among which is salt. I want to know if he takes into consideration the various Fair Trade Acts of the various States in selling at cost, or near cost.

Trial Examiner Purcell: My former ruling is reaffirmed.

By Mr. Haslett:

Q. You stated on direct examination that as a wholesale dealer, you were usually satisfied to sell at the lowest

possible penny, realizing only part of the cash discount as a profit.

Now, in relation to your various activities when you were in the wholesale business back in Pennsylvania,
2653 in the good old days, what was your usual average, or gross margin of profit on sales?

A. We took four and a quarter at the end of the year. We figured it out on our sheet at four and one-quarter, and during the year we figured it as five.

Q. Five was the maximum?

A. Yes. I am speaking now of Allentown, Pennsylvania, where I operated one for eighteen years.

Q. What was your usual average net income on sales?

Mr. McBride: If the Examiner please, I object to that. That goes to the question of dollars and cents of net income. It is beyond the scope of the direct examination. In no case today did I question this witness in any way about his net income, under any operation, dollars and cents, or any other way. The questions were confined to the factors that went into the determination of it, which was something wholly apart from the amount of net income realized.

Mr. Haslett: I beg to differ with counsel. He has on several occasions gone into the net realization as to N. R. O. G. wholesalers, and also asked him as to other wholesalers, what his opinion would be. I think I am entitled to go into it on cross-examination.

Trial Examiner Purcell: If you are content to confine your questions to percentages instead of dollars and
2654 cents.

Mr. Haslett: Yes, he answered in percentages in previous questions.

Trial Examiner Purcell: But now you are attempting to elicit a dollars and cents answer out of the witness.

Mr. Haslett: The cash discount is in dollars and cents. He stated that he would be satisfied with part of the cash discount. Well, part of the cash discount isn't on a percentage basis. It is in dollars and cents.

Mr. McBride: If the Examiner please, counsel is trying to tie into net income, and argue this point whether he is intending to elicit from this witness a dollars and cents answer on net income, or a percentage answer on net income. There is no testimony, there are no questions re-

garding net income, either in terms of dollars and cents, or in terms of percentage.

The questions have been in terms of percentages of mark-up, in terms of gross differential, and in terms of factors, from which one would determine net profit, but at no stage have we entered the field of net income, as such.

Mr. Haslett: Mr. Examiner, he stated that he would be satisfied to sell at the lowest possible penny, and would realize only a part of the cash discount.

Now, I think under cross-examination that I am entitled to go into what was his usual average net in-
2655 come, taking into consideration the cash discounts that he received upon his purchases.

Mr. McBride: I think the Examiner will recall that the testimony regarding taking part of the cash discount, that that was in connection with the mark-up on the items, and had nothing to do in relationship to net income.

Trial Examiner Purcell: I think you are correct in that, Mr. McBride.

The question is, just how far counsel for the Commission shall be permitted to go on his cross-examination, after you have opened up the door in your direct on this very subject.

I recall that you were stopped on that with regard to the N. R. O. G., and you took the witness back to a company that he formerly operated, on this particular line of questioning. I also have in mind that at the former hearings of this case, there was a great deal of discussion on this dollars and cents proposition, and I think it was decided then to abandon the dollars and cents, and confine ourselves to a percentage basis.

If I am wrong in that, I will stand to be corrected by the record. One cannot remember everything. That was last April, and this is October.

I think the objection of Mr. McBride is well taken. I will sustain it.

2656 By Mr. Haslett:

Q. What is the cash discount generally allowed to wholesalers?

A. It varies on the commodities, from absolutely no cash discount, to tops of 2 per cent cash discount.

Q. Then on a ten million dollar purchase, that would be $20,000?

A. You have got to average it. Your average cash discount over your whole line runs about 1¼ to 1½.

Q. Then on ten million dollars, it would be approximately $15,000 cash discount? It averages around 1½ per cent?

A. That is the cash discount.

Q. You say, then, you would be willing to receive, if you purchased ten million dollars worth, you would be willing to receive the $15,000 as your profits?

Mr. McBride: If the Examiner please, I will object to that question for the same grounds. There is nothing in the testimony that warrants a question of his receiving $15,000 as net profits.

Trial Examiner Purcell: The objection is overruled. The $15,000 figure was arrived at as a mere matter of computation arrived at by the witness, and the witness has said that was what he would be willing to receive.

Mr. McBride: If the Examiner please, I am not objecting to the computation. I recognize it as an ex-
2657 ample, but the question of design, on the basis that the witness would be willing to receive $15,000 as his net profits.

Trial Examiner Purcell: I don't know the design of the question.

Mr. McBride: It is stated on the face of it.

Trial Examiner Purcell: If you please, Mr. McBride. If you will indulge me. I have listened very patiently to you. I don't know what is in the mind of counsel in framing the question. I know that the question is proper cross-examination, that the computation, as I said, has been confirmed by the witness, and by the witness on voluntary statement on direct examination he said that he would be satisfied, or his company would be satisfied with accepting a per cent, or a portion of the cash discount.

The objection is overruled.

By Mr. Haslett:

Q. Mr. D'Miller, I stated to you at one point that 5 per cent, which would be the average discount of ten million dollars, would be $15,000. That isn't really correct. It would be $150,000, wouldn't it, sir?

A. You are talking about the total mark-up. You have got to get your expenses out of that, sir. We were talking about 1½ per cent, and you got down to $15,000. You did that, not I.

Q. I see, sir. 1½ per cent on ten million dollars
2658 would $150,000, wouldn't it, sir?

A. Yes.

Q. And it would be $15,000 on one million, is that correct, sir?

A. Is it? Wait a minute. Perhaps you misunderstand me. I have closed books in Allentown, Pennsylvania, not one year, but a number of years, and I had red figures until I saw what the total amount of cash discount that I had received was over that year, and then when I balanced that, I had a black figure. Do you understand me now, sir? Now, in percentage, I don't go over it that way at all, sir.

Q. That was in dollars and cents, then, wasn't it, sir?

A. Sure.

Q. The cash discounts are in dollars and cents?

A. Certainly.

Q. And when you applied your cash discount to your red figures, you came out in black, is that correct?

A. I took the total dollars and cents that I received from cash discounts. Percentage is gone, then.

Q. And the average of the cash discount would be approximately—

A. I said in buying merchandise, the average—

Trial Examiner Purcell: Let counsel finish his question, please, Mr. D'Miller. Read back counsel's question, so he can take up where he was interrupted.

2659 (The question above referred to was read by the Reporter.)

By Mr. Haslett:

Q. It would be approximately 1½ per cent, would it not, sir?

A. 1¼ to 1½.

Q. Then after applying the cash discount to the red figures, in which you came out black, what was your net average income on your sales?

Mr. McBride: Same objection, Mr. Examiner, for reasons previously stated on almost the identical question.

Trial Examiner Purcell: Mr. Haslett, I think I have already ruled on that.

Mr. Haslett: Yes, but I have laid additional foundation for that now, sir. He stated that his cash discounts in dollars and cents were to be applied to his income in order to offset any loss that he may incur in other selling operations.

Trial Examiner Purcell: And having done that, he testified that he thereupon came out in the black. You now want to know what his net profit was?

Mr. Haslett: No, average net income.

Trial Examiner Purcell: Average net income on his year of transactions?

Mr. Haslett: That is right, sir, on sales, you see.

2660 Trial Examiner Purcell: I understand. I don't see that that is material to this case, do you, sir?

Mr. Haslett: I certainly do, sir.

Trial Examiner Purcell: Upon what grounds?

Mr. Haslett: First, it is within the confines of the direct examination, and, then, on the grounds that I am entitled to show through this witness that he is dependent upon cash discounts in order to realize his net income or profits during a particular period of time.

Trial Examiner Purcell: To absorb other losses?

Mr. Haslett: That is right, sir.

Mr. McBride: I have only one further comment, Mr. Examiner. Mr. Haslett suggested that he has now laid the foundation for this question. I take it that it is not within the prerogative of counsel's cross-examination to lay the foundation for anything unless it first comes within the scope of the direct examination.

Trial Examiner Purcell: Of course, that is axiomatic.

Mr. McBride: I simply wanted to meet his comment.

Mr. Haslett: When I stated that, I didn't mean to state that I brought in extraneous matter to predicate another question upon.

Trial Examiner Purcell: We understand. The Examiner is ready to rule.

2661 The objection of counsel for the Respondent is overruled.

Mr. McBride: I note an exception.

Trial Examiner Purcell: Let the exception be noted. Read the question to the witness, please.

(The question above referred to was read by the Reporter.)

The Witness: That I couldn't answer, without the records.

By Mr. Haslett:

Q. But you stated, Mr. D'Miller, that the average would be between 1¼ and 1½?

A. That is what I got.

Q. So that it wouldn't—

A. And the idea of telling you that—

Trial Examiner Purcell: Gentlemen, you will have to stop talking two at a time. Read the record, Miss Reporter, please.

(The record as above referred to was read by the Reporter.)

Mr. Haslett: Let me finish my question.

Mr. McBride: If the Examiner please, I think the witness hadn't even answered his question yet.

Trial Examiner Purcell: The question was being put.

2662 Mr. McBride: The question was an interruption of the answer. I think the witness shouldn't be charged with that interruption. Let him finish his answer before another question is put.

Mr. Haslett: I think the record will show that I had started.

Trial Examiner Purcell: We are not going to argue, if you please, over split second decisions, as to who interrupted who. The point is, I want this record kept straight, and if you gentlemen will proceed in an orderly fashion, no matter whose fault it is, we can do it. Otherwise we will never get any place. Mr. Haslett, will you continue on with the putting of your last question.

Mr. Haslett: Mr. D'Miller, if I interrupted you, I am very sorry, sir. I didn't mean to do so, sir.

By Mr. Haslett:

Q. So your net profit wouldn't be below your average of between 1¼ and 1½ per cent, would it, sir, the net income?

A. It would be any part of that.

Q. But it wouldn't be below that?

A. It could be less than the average income that I got, yes, sir. The reason I made that statement was to show that we operated so close to the margin at which we put on our merchandise to the retailer, that we would lose
2663 money if we didn't have the cash discount, which is considered a banking proposition. You either make it or don't make it.

Q. The cash discount is very essential?

A. Yes, without which we would be in red figures. That is why I made that statement, yes, sir.

Q. If you didn't have your cash discount, then you would be operating at a loss, is that correct?

A. And then we would raise our cost to the retailer.

Q. You would then raise the cost to the retailer?

A. That is right.

Q. In order not to operate at a loss?

A. Yes, sir.

Q. But since you have the cash discount, you use that instead of raising the cost to the distributor, is that correct, or to the retailer?

A. That is an addition to the invoice cost of your merchandise. If I couldn't make that, didn't have the money to discount my bills, I wouldn't get it. Some get it and some don't. Some get it all the time, and some get it part of the time.

Q. Do you think that those that don't get it are at a disadvantage?

A. No question about it. It is only a question of time.

Q. That they are at a disadvantage, you say?

A. I would say so.

2664 Q. And it is just a question of time whether they go out of business, isn't it?

A. It doesn't help their cause any.

Q. If they don't get the cash discount, that is tantamount to purchasing at a higher price of the particular products, isn't that correct?

A. The cash discount is the same to every one. They all have a chance to take it, or not take it.

Q. You stated that some get the discount, and some don't get it.

A. I said they are not able to take it, because they don't have the finances to discount the invoice, and many a time you have to pay the discount before you ever see the merchandise, and your money runs out, and you therefore discontinue discounting.

Q. How much of a cash discount do you get from the Morton Salt Company?

A. I think it is—

Mr. McBride: I object to that question. There is no testimony in the record with respect to any cash discount from the Morton Salt Company.

Mr. Haslett: We have been talking about cash discounts here. It is part of the picture, Mr. Examiner. It is relative to the issues of this case, and I think it is within the confines of the direct examination.

2665 Trial Examiner Purcell: Ask the witness, I suggest, Mr. Haslett, how much discount, if any, is re-

ceived by N. R. O. G. from the Morton Salt Company. I think that will overcome the objection.

By Mr. Haslett:

Q. How much discount, if any does, the N. R. O. G. receive from the Morton Salt Company?

A. What discounts are you speaking of?

Q. Cash discounts.

A. I don't pay the bills. I think it is 1 per cent. I don't pay the bills. I don't o. k. them for payment, but I think it is 1 per cent.

Q. That cash discount is received by N. R. O. G. members, or by the purchasing office here in Chicago?

A. We bill as we are billed.

Q. Well, do you bill immediately, sir?

A. As soon as I can get the invoice and get it in the mail, sir.

Q. Would the invoice that you transmit to your members show a cash discount on Morton's round package salt?

A. If they pay their invoice in ten days.

Q. Then they would get the benefit of that 1 per cent?

A. Yes, sir.

Q. If paid within ten days, within the ten day period?

A. Whatever the discount period is.

2666 Q. Now, Mr. D'Miller, you stated that your organization receives a 15 cents rebate from the Morton Salt Company on the round package salt, per case?

A. I didn't say that.

Q. What did you say, sir?

A. Did I testify 15 cents?

Q. Well, I was under the impression that you did, sir. What did you get, then, sir?

A. I don't know.

Q. You testified to some figures here. Do you remember the figure you testified to?

A. I think it was ten cents, wasn't it. I couldn't recall that right now.

Q. You don't know whether you testified to 10 cents or 15 cents?

A. 10 cents, I would say.

Q. Are you sure about that, sir?

A. Yes.

Q. Did you receive any other discounts from the Morton Salt Company upon the purchases of the various members of N. R. O. G.?

A. No, sir.

Q. Do you receive any discounts on other grades of table salt, other than the Blue Can salt, from the Morton Salt Company?

2667 A. On table salt.

Q. What is that discount?

A. It averages between 4 and 5 per cent over-all on all package table salt.

Q. And is that what is generally known as a one unit discount? Have you ever heard of it referred to as a unit discount?

A. It is a quantity purchase.

Q. Does the N. R. O. G.'s main purchasing office here in Chicago purchase $50,000 worth of table salt from the Morton Salt Company during a twelve consecutive month period?

A. Our sales on Morton table salt are far above $50,000.

Q. That is, the combined purchase of all N. R. O. G. members?

A. Yes, sir.

Q. You wouldn't state that any single member of N. R. O. G. purchased $50,000 worth of table salt during a twelve consecutive month period, would you?

A. I would.

Q. Do you know of any single member?

A. Yes, sir.

Q. Would you give me his name, sir?

A. I don't think that is necessary at all.

Q. Is it a trade secret?

A. I prefer not to answer.

2668 Q. You see, one of the charges of the complaint, Mr. D'Miller, is that some customers are getting a unit discount, and some customers are not getting a unit discount. But if you prefer not to answer that question.

A. I would like to verify—I just imagine that we have several that do. I couldn't give you for a fact, but I think so. I wouldn't say yes.

Q. I assume that the books and records of the N. R. O. G. are available to the Federal Trade Commission for examination?

A. Absolutely.

Q. You have no objection to our checking those figures?

A. No, sir.

Mr. McBride: If the Examiner please, to relieve possible embarrassment, might I state that the Morton Salt Company has never at any time taken the position that any of

its quantity discount customers have qualified in terms of the purchases of individual units or warehouses, or purchasing points, nor have we taken that position with respect to N. R. O. G., which I think possibly would relieve Mr. Haslett's concern on that score, and it has been so testified to by a number of witnesses from the Morton Salt Company.

Trial Examiner Purcell: Yes, the record is replete with regard to your position on that. Nevertheless, Mr.
2669 Haslett is entitled to show that that is a fact.

Mr. McBride: I agree. I didn't mean that as an objection to the question, but simply to relieve the embarrassment raised by the question here.

Trial Examiner Purcell: Let the record state just that.

Mr. Haslett: Would counsel care to state for the record that no single member of N. R. O. G. purchases $50,000 worth of table salt during a twelve consecutive month period?

Mr. McBride: I won't state that, because I don't know. I say merely it is immaterial to our defense.

Trial Examiner Purcell: Now, gentlemen. Mr. McBride simply stated the converse of the basis of your question, Mr. Haslett. In other words, he stated for the record that never at any time has it been necessary for the Federal Trade Commission to prove as a fact, so far as this Respondent is concerned, that any of the members of N. R. O. G., or any other chain, or large purchaser, would in fact purchase in excess of $50,000 in a year. Am I correct in stating your position there, Mr. McBride?

Mr. McBride: Yes, that is correct. You refer to the purchase in terms of individual units or members?

Trial Examiner Purcell: That is what I said.

Mr. McBride: That is correct.

Trial Examiner Purcell: Now, to ask counsel to
2670 stipulate, or state for the record, Mr. Haslett, that no member of N. R. O. G. purchase $50,000 or more, I think that is quite out of order.

Mr. Haslett: I don't know whether it is out of order or not.

Trial Examiner Purcell: Well, the proof is available to you, sir, by proper methods. You have your way without asking counsel to stipulate.

Mr. Haslett: Well, counsel was trying to relieve what you called an embarrassing situation.

Trial Examiner Purcell: Yes, and you went further.

Don't let us review that. We know perfectly well where we stand.

Mr. Haslett: But I still don't concede that my statement is out of order.

Trial Examiner Purcell: All right, sir, then it is in order, and Mr. McBride has refused to accede to it.

By Mr. Haslett:

Q. Mr. D'Miller, when did you operate as a wholesale grocer, sir?

A. Where?

Q. When?

A. I couldn't give you the years. Lancaster, Pennsylvania, first, for a number of years, and eighteen years in Allentown, Pennsylvania.

2671 Q. Did you operate up until the time you became president of N. R. O. G.?

A. After that, I still continued.

Q. How long have you been president, sir?

A. Seven years.

Q. And did you operate a wholesale grocery firm up to the time that you began to devote your entire time to being president of N. R. O. G.?

A. Yes, sir.

Q. And has it been since the period that you devoted your entire time to being president of N. R. O. G. that you discontinued the operation of the wholesale grocery firm?

A. I discontinued Allentown, Pennsylvania in February of 1941.

Q. How about Lancaster?

A. I gave up Lancaster when I went to Allentown. I was there eighteen years, sir.

Q. Mr. D'Miller, when you were operating a wholesale grocery firm at Allentown, Pennsylvania, were you purchasing salt through N. R. O. G. from the Morton Salt Company?

A. I was.

Q. And were you receiving a cash discount or rebate from N. R. O. G., upon your purchases?

A. I got a credit after the transaction, at some time, on our purchases of any kind of salt.

2672 Q. Well, prior to the time that N. R. O. G. switched over to its present plan of operation, what type of discount did you receive on your purchases of Morton's Blue Can salt?

A. I don't recall that.
Q. You don't recall that?
A. No, sir, I do not.
Q. Would that information be available to us?
A. At Allentown?
Q. No, I mean at N. R. O. G.'s office here in Chicago?
A. Sure.
Q. I believe you stated that N. R. O. G. members now purchase at a net figure of $1.40 on the round package.
A. I didn't quote the price.
Q. I don't want to misquote your testimony at all.
A. I said we billed as we were—

Trial Examiner Purcell: Counsel is speaking. Mr. D'Miller. Wait until he finished his question.

By Mr. Haslett:

Q. Mr. D'Miller, I believe Mr. McBride brought out that the carload price on round package salt was $1.50 per case, if you remember that, sir?
A. Yes.
Q. And then you stated that N. R. O. G. members got a 10 cent discount or rebate on the round package salt.
A. That is right.
Q. So my question then was predicated upon that information, that N. R. O. G. members now purchase round package salt at $1.40 per case. Is that correct, sir?
2673 A. We bill as we are billed. I do not O. K. the bills. I couldn't say whether it is $1.10, $1.40, or $1.80. I couldn't tell you that.
Q. So you don't know whether the testimony you gave in regard to the $1.50 price and the $1.40—.
A. That was to the best of my knowledge, sir.
Q. You don't know whether that was in effect or not, sir?
A. I know we bill what we are billed.
Q. But you don't know what you are billed at?
A. I don't remember the figures. I can't tell you those, sir.
Q. It might be $1.60?
A. It could be $2, as far as I know.
Q. So the $1.50 was not to your actual knowledge?
A. That was what I thought.
Q. I say it wasn't of your actual knowledge, was it, sir, $1.50?
A. To the best of my knowledge, it was that statement when I made it, yes, sir.

Q. $1.50. You don't want to change that now, sir? Do you want to change that testimony?

A. No, sir.

Q. It is still $1.50 as far as you are concerned?

Mr. McBride: If the Examiner please, I think this line of questioning has continued far enough. The witness
2674 has stated the basis on which he testified. I don't think it is necessary to harass the witness on this.

Mr. Haslett: It is not the purpose of counsel to harass the witness. All I am trying to do is find out some definite testimony, Mr. McBride.

Trial Examiner Purcell: You may proceed, Mr. Haslett.

By Mr. Haslett:

Q. Assuming that the testimony you gave of $1.50 was correct and that the testimony you gave of 10 cents rebate per case is correct, what would be the purchase price effectuated by the various N. R. O. G. members for the round package salt, per case?

A. That I couldn't answer. It would be agreeable to me for you to come over and look at my invoices and get these prices off. I would be very glad to give them to you. I certainly don't carry them in my mind. I will throw my files open on every invoice I have got, sir.

Q. I appreciate that, Mr. D'Miller. My examination of you is not to confuse you in any way, but the Commission has a case to decide here, and it means a great deal to the respondent and it means a great deal to thousands of other little wholesalers throughout the country, and we want to get the true facts.

A. Wouldn't that be the true facts?

2675 Q. That is right, sir, but since you testified to them—

A. I thought I was right, and you asked me the second time and I say I don't O. K. those bills, they don't go through me. I would be very glad to show you any invoice you want to see.

Q. Mr. D'Miller, you testified that a competitor of one of N. R. O. G.'s members was paying $1.20 for round package salt per case, and the N. R. O. G. member was paying $1.40 for the same salt, same grade, type, size, the identical package, and that that would not affect the N. R. O. G., due to the fact that they were paying a higher price for the salt?

Mr. McBride: If the Examiner please, I object to that question as not being in accordance with the testimony.

By Mr. Haslett:

Q. What did you testify to, Mr. D'Miller, on that particular point?

Trial Examiner Purcell: There is an objection pending before the Examiner.

Mr. Haslett: I am sorry.

Trial Examiner Purcell: My recollection, Mr. McBride, is that Mr. Haslett has substantially stated the testimony of the witness on direct.

Mr. McBride: Quite the contrary, Mr. Examiner. Mr. Haslett has added into his question the fact that $1.20 would not affect N. R. O. G., paying $1.40, which were the suppositious figures used in my hypothetical question.

2676 The question was neither framed in terms of effect, nor was the answer in terms of effect. Rather, as the record will show, it was in terms of whether or not it would necessarily follow from that fact alone that the net profits of the $1.20 buyer were necessarily less than the profits of the $1.40 buyer, which is quite a different question and quite a different answer.

Mr. Haslett is seeking to twist into that—I don't mean to impugn bad faith—the same type of question that he asked on direct of his witnesses. I object to the question on that ground.

By "twisting" I mean no aspersions.

Trial Examiner Purcell: Now, with the statement of Mr. McBride, and having refreshed the Examiner's memory, I recall we had quite an extended discussion on that very point upon an objection raised by counsel for the Commission, which I overruled.

I think, Mr. Haslett, that Mr. McBride is right in the way he has stated the manner in which his question was put and the response received thereto. In other words, what would necessarily be the effect of such a condition, a differential of 20 cents per case, between the N. R. O. G. and its competitor? Would it necessarily imply that the N. R. O. G. wholesaler would suffer no injury?

Mr. Haslett: Then am I to understand the Ex-
2677 aminer is sustaining the objection?

Trial Examiner Purcell: To that extent.

Mr. Haslett: I see, sir.

By Mr. Haslett:

Q. Mr. D'Miller, in your direct examination Mr. McBride gave you what he now calls a hypothetical question, although at that time I didn't know it was such, where a competitor was purchasing round package salt at $1.20 a case and N. R. O. G. was purchasing at $1.40 a case, and I believe you stated that the differential of 20 cents, or about 16⅔ percent, would not necessarily affect competition, is that correct, sir?

A. That is right.

Mr. Haslett: Have you any objection?

Mr. McBride: No.

By Mr. Haslett:

Q. Do you mean to say, Mr. D'Miller, that if one of your members paid 16⅔ percent more for all of his requirements that he would be in a position to compete with A. & P. or other large companies?

A. Absolutely no. I thought this 20-cent difference was—if the difference was 20 cents—I couldn't imagine 20 cent difference on an item that cost $1.20 or $1.30. I thought it was a hypothetical question. If it was that much, I couldn't imagine such a difference in the cost.

2678 Mr. Haslett: Now, would you read the question and answer, please, Miss Reporter?

(The question and answer above referred to were read by the reporter.)

Mr. Haslett: Mr. McBride, you did state $1.20 and $1.40.

Mr. McBride: In the example, yes, with respect to illustrations of Morton's Blue Package, for illustrative purposes only.

By Mr. Haslett:

Q. Now, Mr. D'Miller, taking into consideration my last question and your answer, do you now want to change the testimony that you gave on direct examination to Mr. McBride's question.

Mr. McBride: Mr. Examiner, I want to object to that. I don't know why the witness should be called upon to change his testimony.

Trial Examiner Purcell: Now, if the cross-examination has developed any reason why the witness desires to change his testimony, I think it is very gracious on the part of the

attorney for the Commission to invite it to be done or permit it to be done.

Mr. Haslett: He stated that he didn't understand it, that he didn't understand the question.

Mr. McBride: I will withdraw the objection.

2679 Trial Examiner Purcell: The objection is withdrawn.

The Witness: The question is what?

Trial Examiner Purcell: Let the record be read to the witness.

(The question above referred to was read by the reporter.)

The Witness: What was my answer then?

(The answer above referred to was read by the reporter.)

A. If the difference is 20 cents. In other words, we are paying 20 cents more than our competitor. In some cases we could do it. With the lower cost of doing business and the turnover and the quantity, in some cases yes; and in some cases no.

By Mr. Haslett:

Q. Now, in the case of salt, where one of your competitors is purchasing for $1.20 a case for the round package blue label salt—

A. Yes.

Q. —and one of your members has to pay $1.40 a case for it—

A. It depends on what percentage of the total volume done by him is in salt. That may be taken as a loss leader, and as such it could be absorbed in the balance of the

2680 volume of business done.

Q. It would have to be absorbed in other things, then, wouldn't it, sir?

A. Like we do with any loss leaders or low cost selling items.

Q. The 20-cent differential in price, that is, the difference between what you are paying for it and what your competitor is paying for it, must be absorbed in some way, if you were in the salt business alone, and bought it at $1.40—

A. We would have no loss—

Trial Examiner Purcell: Let the question be finished, please. Give counsel his connection, Miss Reporter.

(The question above referred to was read by the reporter.)

By Mr. Haslett:

Q. If it were bought at $1.40, if you were in the salt business alone and paid $1.40 for a case of Morton's round package salt, and one of your competitors was paying $1.20 for a case of salt, that would have a substantial effect upon your business, wouldn't it, sir. There is a 16⅔ percent differential.

A. But it is such a small volume compared to my total volume, as a wholesaler, that it wouldn't mean as much as it sounds, when you say 20 cents a case, sir.

Mr. Haslett: Your answer isn't responsive.

2681 Trial Examiner Purcell: The question is, if you were in the salt business, is that the way you want it, Mr. Haslett?

Mr. Haslett: That is right.

Q. If you were in the wholesale salt business, purchasing salt for resale to retailers and that was the only commodity you purchased, and you purchased at $1.40 while one of your competitors across the street was paying $1.20 for it, that certainly would have a substantial effect upon your business, if both of you were seeking the same market, wouldn't it?

A. Yes, sir.

Mr. McBride: I object to that. He isn't in the salt business alone. He is testifying as a wholesaler.

Trial Examiner Purcell: Objection overruled. If your only objection is as to the possible insignificance of the volume of business done in salt as compared with all other commodities, the objection is overruled.

By Mr. Haslett:

Q. Mr. D'Miller, I believe that Quality Service Stores of Atlanta are a member of your outfit?

A. They are.

Q. And they purchase their requirements of salt from the Morton Salt Company, isn't that right, sir?

2682 A. Sometimes they do.

Q. And sometimes the purchases ar placed through your office here in Chicago?

A. Sometimes through salesmen and sometimes through our office.

Q. And when you say "salesmen", you mean Morton's salesmen?

A. That is right.

Q. Now, the Quality Service Stores are in competition with a number of other retail stores, isn't that correct, in Atlanta, Georgia?

A. That is right.

Q. And they sell salt, groceries, and allied products direct to the consuming public, isn't that right, sir?

A. Yes, sir.

A. Along with numerous other retailers in Atlanta, Georgia, all of them seeking to market to the consuming public, isn't that correct, sir.

A. Yes.

Q. Would the salt business, on the round package blue label salt, of the Quality Service Stores, be in any way affected by the fact that Quality Service Stores were selling salt to the consuming public at 8 cents per package while at the same time A. & P. was selling the round package salt to the consuming public at 6 cents a package?

A. There is bound to be an effect.

2683 Q. An adverse result, sir?

A. I would say so, but then—

Q. I think that is sufficient.

Mr. McBride: If the Examiner please, again, let the witness answer, if you please, and not break him off. If the witness has a qualifying remark, he has a right to state it.

Mr. Haslett: I didn't mean to break it off, Mr. D'Miller. If you have any other statements to make, I would be glad to have you do so.

The Witness: In a case of that sort, our average house would meet that leader the next time and eliminate one of his other loss items, so a competitor may have salt as a loss leader this week and we might have it next week.

By Mr. Haslett:

Q. And it would be absorbed?

A. All loss leaders have to be absorbed.

Q. Let us assume, in our hypothetical case, that your house did not elect to meet the lower price of A. & P. Then his business would be affected by the fact that A. & P. had the lower price on the same type of salt, of the same grade, quality, and size; that is, the salt business, not taking into consideration any other business?

A. Salt is very heavy. It is such a small percentage and

the specials on salt aren't such that you will go five
2684 or six squares to carry home heavy salt.

Q. I think that is true, sir, but my question was: If Quality Service Stores in Atlanta, Georgia, decided not to lower the price, say, to 6 cents, but continued to sell it at 8 cents, while at the same time A. & P. across the street was selling to the consuming public at 6 cents, that would in some way adversely affect the business of salt on that round package salt to Quality Service Stores?

A. It would hurt the sale of it.

Q. Now, Mr. D'Miller, you testified, I believe, sir, and I want to state your testimony correctly, that if N. R. O. G. was purchasing salt at $1.40 a case and was selling it at $1.60 a case, while at the same time one of N. R. O. G.'s competitors was purchasing at $1.35 a case and selling the salt at $1.60, that that would not necessarily affect the business of N. R. O. G., is that correct, sir?

The Witness: Repeat that question, please.

Mr. Haslett: Read the question.

(The question above referred to was read by the reporter.)

A. It would not.

By Mr. Haslett:

Q. The fact that the competitor was making 5 cents more per case on salt would not necessarily affect N. R. O. G.'s salt business?

2685 A. Did you say salt business?

Q. That is right, sir.

A. It would have some effect on the salt, on the volume of salt, sir, yes.

Q. Of course, it would, sir. If any competitors are buying any product at a lower price than what N. R. O. G.'s members are purchasing it for and selling it at the same price, they are making more money on it?

A. But they don't have the same method of operation. We can do it on a number of items.

Q. You can do it on a number of items, but it is on the general over-all.

Q. You are confining your question on this one particular salt item. We could absorb it in salt and get by very easily, sir.

Q. In Morton's round package salt?

A. I am talking about any kind, sir.

Q. You are talking about any kind of salt?

A. We could absorb the cost of round Morton's salt, sir.

Q. Would you tell us how N. R. O. G., and let us take the Atlanta, Georgia, Quality Service Stores, where they are paying $1.40 a case for it and selling it at $1.60, and a competitor is paying $1.35 for it and selling it at $1.60; will you tell me how the 5-cent differential in price between the purchasing price of Quality Service and its competi-
2688 tor's can be absorbed in the sale of round package salt?

A. I cannot.

Q. That 5-cent differential in price has a substantial effect upon competition, doesn't it?

A. Not on salt, a 5-cent differential is not substantial, no, sir.

Q. How much would it take to have a substantial effect upon competition?

A. I would have to analyze the business to get the percentage of salt out of the rest of the business in my warehouse, to answer that question.

Q. Now, you stated that the 5-cent differential in price for round package salt wouldn't substantially affect competition. Now, you state that you don't know whether it would affect competition.

A. It wouldn't affect it, sir.

Q. Why wouldn't it affect it, sir?

A. It is such a small percentage of the total volume that his loss in salt could be figured up on something else. There are many, many more of his items that it could be figured up on.

Q. I think you are missing the significance of my question. I am talking now about the round package salt, as if he were in the round package salt business alone.

What effect, if he were in the round package salt
2687 business alone, buying it at $1.40 and selling it at $1.60, while a competitor was buying at $1.35 and selling it at $1.60, in that case what effect would it have?

A. I couldn't conceive of anybody being just in the round package salt business. Certainly nobody could buy and sell beyond cost?

Trial Examiner Purcell: Counsel has asked you to assume those facts?

The Witness: What is your question?

Trial Examiner Purcell: Read the question.

(The question above referred to was read by the reporter.)

Trial Examiner Purcell: Answer the question.

A. It would hurt him very much.

By Mr. Haslett:

Q. Mr. D'Miller, just one or two other questions, sir: When you gave the percentage figures on the round can of between 2 per cent and 5 per cent, and 3 per cent and 8 per cent, and one-tenth of one per cent, they were all estimated figures, weren't they, sir?

A. Absolutely.

Mr. Haslett: I think that is all, Mr. Examiner.

Mr. McBride: I have no redirect.

Trial Examiner Purcell: You are excused.

(Witness excused.)

2689 Mr. McBride: Mr. Examiner, again, with the indulgence of the Trial Examiner and counsel for the Commission, I should like further to interrupt Mr. Coyne's examination on direct by placing on the stand at this time Mr. Connor, the auditor of Morton Salt Company, this in view of the fact that his testimony will be confined to certion portions of two exhibits to which Mr. Coyne has testified in part and, by putting on Mr. Connor's direct at this juncture, it will serve for the clarity of the record and an understanding of those exhibits.

Trial Examiner Purcell: Is that acceptable to Mr. Haslett?

Mr. Haslett: That is acceptable.

Trial Examiner Purcell: Very well.

Mr. McBride: Then, Mr. Examiner, I call as the next witness on behalf of the Morton Salt Company, Mr. Connor. Will you take the stand up here and be sworn?

GEORGE L. CONNOR was thereupon called as a witness for the respondent and, having been first duly
2690 sworn, testified as follows:

Direct Examination by Mr. Haslett.

Q. Mr. Connor, will you state your name and address for the record, please?

A. George L. Connor; 2100 Lincoln Street, Evanston, Illinois.

Q. What is your occupation, Mr. Connor?

A. I am an accountant.

Q. And by what company are you employed?

A. Morton Salt Company.

Q. What is your official position with the Morton Salt Company?

A. General auditor.

Q. And as general auditor, what are your duties?

A. I have charge of the accounting and auditing department.

Q. How long have you been employed by the Morton Salt Company?

A. Since November, 1929.

Q. And of the period of your employment how long have you been the head auditor of the company?

A. Since April, 1942.

Q. Prior to April, 1942, what was your official position with the company?

A. Assistant auditor.

2691 Q. And your duties as assistant auditor were what?

A. Much the same as they are at present.

Q. And as first assistant auditor and finally general auditor for the company, you have under your direct control and supervision the accounting records of the Morton Salt Company, is that correct?

A. That is right.

Q. By "accounting records", you refer to all accounting records that the company keeps, is that right?

A. Yes, sir.

Q. And you have the direct charge and supervision of all employees in the accounting department who have to do with the maintenance and keeping of those accounting records?

A. That is right.

Q. Mr. Connor, I show you Respondent's Exhibit No. 22, and I will ask you to examine the same and state whether or not you have ever seen that exhibit before.

(Handing document to the witness.)

A. Yes, I have seen it before.

Q. Did you supply any of the figures appearing on that exhibit, Mr. Connor?

A. Yes.

Q. Will you identify which of the figures were supplied by you, please?

A. Under the caption of "Invoicing operations", I
2692 supplied the figures down to the total.

Q. In other words, you supplied the figures beginning with $212,792.42 down to the total figure, $317,161.96, is that correct?

A. That is right.

Q. At whose request did you furnish those figures, Mr. Connor?

A. At the request of Mr. Coyne.

Q. Did you furnish any other figures on that exhibit besides the ones which you have just identified?

A. I furnished the figures under the caption of "Credit operations" from the item of "Salaries, $25,277.38" to the total of $40,295.97.

Q. At whose request did you supply those figures?

A. Mr. Coyne's request.

Q. With respect to all of the figures which you have identified as having been supplied by you, did those figures come from the original accounting records of the Morton Salt Company?

A. Yes.

Mr. McBride: Miss Reporter, I ask that you mark this as Respondent's Exhibit 25 for identification.

(The document referred to was marked Respondent's Exhibit 25 for identification.)

Mr. McBride: I ask that you mark this as Re-
2693 spondent's Exhibit 26 for identification.

(The document referred to was marked Respondent's Exhibit 26 for identification.)

Mr. McBride: I ask that you mark this as Respondent's Exhibit 27 for identification.

(The document referred to was marked Respondent's Exhibit 27 for identification.)

By Mr. McBride:

Q. Mr. Connor, I show you Respondent's Exhibit No. 25 for identification and ask you to examine the same and state what it is, if you will, please.

(Handing document to the witness.)

A. It is the breakdown of the "Invoicing operations."

Q. Now, by the "breakdown of the Invoicing operations", are you referring to the breakdown of the figures

appearing under the heading "Invoicing operations" on Respondent's Exhibit No. 22?

A. Yes.

Q. Who prepared Respondent's Exhibit 25 for identification?

A. I prepared it.

Q. And was that prepared from the accounting books and records of the Morton Salt Company?

A. Yes, sir.

Q. And that represents the true and correct figures of the accounting records of the Morton Salt Company—

2694 A. Yes.

Q. —under your supervision?

A. Yes.

Q. Are you familiar with all the figures and items appearing on Respondent's Exhibit 25 for identification?

A. Yes.

Q. Now, Mr. Connor, I show you Respondent's Exhibit for identification No. 26 and ask you to state what that is, if you will, please.

(Handing document to the witness.)

A. That is the breakdown of the "Credit operations", expense, as shown in the schedule 22.

Q. By "schedule 22" do you mean Respondent's Exhibit No. 22?

A. Yes, sir.

Q. Who prepared Respondent's Exhibit 26 for identification?

A. I did.

Q. Are you familiar with all the items and figures appearing on that exhibit?

A. Yes.

Q. And was that exhibit, referring again to Respondent's Exhibit 26 for identification, prepared from the accounting books and records of the Morton Salt Company?

A. It was.

Q. And do they correctly reflect the records in the

2695 books and records of the Morton Salt Company insofar as they purport to reflect the same?

A. Yes.

Q. I show you now, Mr. Connor, Respondent's Exhibit No. 27 for identification and ask you to state what that is, if you will.

(Handing document to the witness.)

A. That represents the breakdown of the specialty sales expense as shown in Exhibit 23.

Q. And in identifying it as "Exhibit 23", do you mean Respondent's Exhibit 23?

A. Yes.

Q. Who prepared Respondent's Exhibit No. 27 for identification, Mr. Connor?

A. I did.

Q. And was that prepared from the accounting books and records of the Morton Salt Company?

A. Yes.

Q. Are you familiar with all the items and figures appearing on Respondent's Exhibit No. 27 for identification?

A. Yes.

Q. And do those items and figures correctly reflect the accounting books and records of the Morton Salt Company, insofar as that exhibit purports to reflect those records?

A. It does.

2696 Mr. McBride: Mr. Examiner, I offer Respondent's Exhibits Nos. 25, 26, and 27.

Mr. Haslett: I would like to note the same objection to the introduction of these three documents known for identification as Respondent's Exhibits 25, 26, and 27, on the same grounds as my other objections on the materiality of the documents. I feel that all three are immaterial to the issues in this case.

Trial Examiner Purcell: You may have your objection. Of course, you have formally objected and stated your grounds on Respondent's Exhibits 22 and 23, and Respondent's Exhibits 25, 26, and 27 being in support and explanation of the original documents, of course, your objection carries through.

The objection will be overruled and the reporter will mark the described document as being admitted in evidence as Respondent's Exhibits 25, 26, and 27.

(The document referred to, heretofore marked for identification RESPONDENT'S EXHIBITS 25, 26, and 27, were received in evidence.)

Mr. Haslett: I assume, Mr. Examiner, that my motion to strike all of this testimony is not in any way affected by the Examiner's ruling?

Trial Examiner Purcell: Not at all, nor will it be.

2697 Mr. McBride: You mean by that as to your reservation?

Trial Examiner Purcell: Reservation. That is the Examiner's understanding.

Mr. McBride: And my comments with respect to the original exhibits and motion are equally applicable with respect to this series of Exhibits?

Trial Examiner Purcell: That is correct.

By Mr. McBride:

Q. Mr. Connor, I show you now Respondent's Exhibit No. 25 and I call your attention to the third figure in the righthand column, being 13,704.31. Does that figure include, according to the manner in which you have shown the detailed breakdown, the salaries of the Chicago city sales clerical staff, exclusive of the salary of the Chicago city sales manager?

A. Yes.

Q. And it does not include therein the salaries of any salesmen working outside the Chicago city sales office of the Morton Salt Company, is that correct?

A. That is correct.

Q. Referring now to the next item, $96,209.85, from the detailed breakdown on Respondent's Exhibit No. 25, does that figure exclude the salary of the country sales manager and the salary of all salesmen working outside the
2698 Chicago office of the Morton Salt Company insofar as country sales are concerned?

A. It does.

Q. So that the $96,209.85 represents the salaries of the clerical staff only of the Chicago country sales department, is that right?

A. It includes the office salaries of the billing department,—

Q. Of the billing department?

Q. —and the office salaries of the cashier's department other than the cashier.

Q. You say the cashier's department other than the cashier. You mean the clerical staff of the cashier's office, is that correct?

A. That is correct.

Q. Exclusive of the salary of the cashier himself?

A. Yes, sir.

Q. Does it include anything else?

A. It includes the salaries of the accounts receivable bookkeepers.

Q. All right. What other salaries does it include, if any?

A. It also includes the salaries of stenographers assigned to the country sales department.

Q. All right?

2699 A. That is all.

Q. Now referring to the next general item, "General office salaries", on the same exhibit, will you state what salaries are included under the sub-heading "Distribution department, Chicago"?

A. That includes the office salaries of the clerical force in the distribution department.

Q. Now, with respect to the "Mailing department" under that same sub-heading?

A. That includes the salaries of the employees in the mailing department.

Q. And that is at the Chicago office?

A. At the Chicago office.

Q. With respect to the next item under that sub-heading, "Branch offices, clerical", will you describe what is included in that item?

A. That item includes the salaries—that includes the salaries of the office help at the branch offices associated with the Chicago office.

Q. By "associated with the Chicago office", do you mean to exclude Kansas City, Dallas, and San Francisco?

A. That is right.

Q. But all other offices you treat as associated offices, for the purpose of this testimony, is that correct?

A. That is correct.

2700 Q. With respect to the "Traffic department", will you state what salaries are included in that item?

A. That includes the salaries of all traffic department employees.

Q. You show on Respondent's Exhibit 25, Mr. Connor, a deduction for receipts from sales of freight rate books. Is that the manner in which the expenses of the salary costs of the traffic department are kept in the books and records of the Morton Salt Company?

A. Yes.

Q. And do you know what those receipts are for, the $7,241.49 item? Do they represent miscellaneous sales of freight rate books used or prepared by the traffic department?

A. That is correct.

Q. So that the net figure for the salaries and costs of the traffic department as carried on the Morton Salt Company books for the period in question would be $20,676.96, is that correct?

A. That is correct.

Q. Now, referring to the "Tabulating department", what salaries are included there, Mr. Connor?

A. The salaries of all employees in the tabulating department.

Q. And that is at the Chicago office?

2701 A. That is at the Chicago office only.

Q. With respect to the "Salt tablet department", what salaries are included there?

A. Those are the salaries of all employees in the salt tablet department in the Chicago office.

Q. And is that likewise true of the "Smoke Salt department"?

A. Yes.

Q. Then with respect to the items to which you have just been testifying, the various salary items, the total is $212,792.42, which is the same item appearing opposite the item "Salaries" under "Invoicing operations" on Respondent's Exhibit 22, is that correct?

A. That is correct.

Q. Referring now again to Respondent's Exhibit 25. Mr. Connor, to the heading "Social security taxes on above salaries", does the exhibit show the manner in which the social security taxes were computed for the salaries in question?

A. Yes.

Q. And was the formula shown under that heading on Respondent's Exhibit 25 applied to the figure $212,792.42 to which you have just testified?

A. Yes.

Q. Will you explain, Mr. Connor, why the percentage formula of 3.81 per cent was used in determining the

2702 social security taxes on those salaries?

A. Because of the difficulty in arriving at the actual social security taxes on the salaries in question.

Q. What difficulties do you have in mind, in particular?

A. In connection with the federal pension tax, the tax applies only on the first $3,000 of salary earned, whereas,

in the case of unemployment insurance, the tax applied on the whole salary earned for the portion of the period of 1939; whereas, from January 1, 1940, the unemployment tax applied on the full salary.

Q. So that, because of that shift or change in the law, you were compelled from your records to use the percentage formula shown on Respondent's Exhibit 25, is that correct?

A. May I correct my answer?

Q. Yes.

A. For the period from January 1, 1940, the unemployment tax applied on the first $3,000 of salary, rather than on the total salary.

Q. Whereas in 1939 it applied to the total salary, is that correct?

A. That is correct.

Q. And it was because of that change in the law that you were compelled to use a percentage figure for the period September 1, 1939, to August 31, 1940, is that right?

A. That is right.

2703 Q. How did you arrive at that percentage of 3.81?

A. That percentage represents the ratio of the total social security taxes paid for the year ended August 31, 1940, to the total payroll of the company for the same year.

Q. And that produced the percentage of 3.81 per cent, is that correct?

A. That is correct.

Q. The figure $8,107.39 shown for "Social security taxes on above salaries", on Respondent's Exhibit 25, is the same item as that shown for social security taxes under "Invoicing operations" on Respondent's Exhibit 22, is that correct?

A. Yes.

Q. And that would be true with respect to all of the various sub-totals appearing on Respondent's Exhibit 25; they would all have their corresponding reflection on Respondent's Exhibit 22, is that right?

A. That is right.

Q. With respect to office supplies and forms on Respondent's Exhibit 25, what was included under the subheading "Chicago office"?

A. All office supplies, forms, and postage.

Q. And was the same thing true with respect to the "Branch offices" item appearing next under "Office supplies, forms, etc."?

A. Yes.

2704 Q. With respect to that branch office item, does that include anything from San Francisco, Dallas, or Kansas City?

A. No.

Q. But it does include Chicago and associated offices, is that correct?

A. That is correct.

Q. With respect to "Traffic expense", Mr. Connor, does that refer to the Chicago office of the Morton Salt?

A. Yes.

Q. And you have noted there "traveling expense, legal fees, printing costs, etc." as being the make-up of the traffic expense in question, is that correct?

A. That is true.

2705 Q. Regarding "tabulating expense", being the next subheading, does that refer only to the Chicago office?

A. Yes.

Q. And you have indicated on the exhibit, have you, the general type of item included under the tabulating expense, is that correct?

A. That is correct.

Q. As carried on the accounting books of the Morton Salt Company?

A. Yes.

Q. Regarding the "rent" item, you show a total rent of Chicago office as $27,193.16. Was that the total amount paid for the Chicago office during the period in question?

A. Yes.

Q. And in arriving at the rent figure $20,086.22, what percentage of that Chicago office rent figure was used?

A. 50 per cent.

Q. And that is indicated by the item $13,596.58, is that correct?

A. That is right.

Q. The next item is "Miscellaneous Office Rents". Will you describe briefly what rents you include under that item?

A. Sundry office rents paid outside of Chicago, other than those listed under the "Branch Office Rents".

Q. You say sundry rents outside of Chicago.
2706 Would there be any sundry office rents included under "Miscellaneous Office Rents" for Kansas City, Dallas or San Francisco, or for any of the territory under the jurisdiction of those three offices?

A. No.

Q. Miscellaneous rents would be for only that portion of the territory under the jurisdiction, the immediate jurisdiction of the Chicago and associated offices, is that correct?

A. That is right.

Q. Mr. Connor, with respect to the item "traffic expense" on Respondent's Exhibit No. 25, are those the general expenses of the same department which appears with reference to "Salaries" under the sub-heading "Salaries" on the same exhibit?

A. Yes.

Q. And is that also true of "Tabulating Expense", being part of the expenses of the same department where the salaries appear under the sub-heading "salaries" on the same exhibit?

A. Yes.

Q. Both of those departments are operated in the Chicago office, is that right?

A. That is right.

Q. Mr. Connor, referring to Respondent's Exhibit No. 26, the first sub-heading, "Salaries", showing the
2707 total $25,277.38, are all salaries of the credit department and the collection department in Chicago included in that figure?

A. Yes.

Q. Are there any salaries or expense items of any kind or description included from the expense accounts of Kansas City, Dallas or San Francisco?

A. No.

Q. Referring next to the "Social Security Taxes on above salaries", there appears the percentage 3.81 per cent; was that arrived at in the same manner and method as you testified to with respect to the Social Security percentage on Respondent's Exhibit No. 25?

A. That is correct.

Q. And the 3.81 per cent on Respondent's Exhibit No. 26 was applied only to the $25,277.38 salary item on that exhibit, is that right?

A. That is right.

Q. Producing $963.07?

A. Yes.

Q. Now, with respect to the next item, "Legal Collection Expense", will you describe what that item is, referring now to Respondent's Exhibit No. 26?

A. That is an expense in connection with the collection of accounts receivable.

Q. And it would include various items as you have
2708 noted them on the schedule, agency charges, court costs, legal fees, etc.?

A. Yes.

Q. Are there any legal collection expenses included in that item from the expense account of the Kansas City, Dallas or San Francisco offices?

A. No.

Q. All other legal collection expenses of the Morton Salt Company, exclusive of those three offices, are included there, is that correct,—that is, of that particular type?

A. Yes.

Trial Examiner Purcell: What do you mean by "that particular type"?

Mr. McBride: The legal collection expense, excluded from all other expense. I think my question possibly was a little ambiguous.

By Mr. McBride:

Q. For clarity, Mr. Connor, all legal collection expenses of the Morton Salt Company are included under that item, except such expense items for expenses of that type as may appear on the expense records of the Kansas City, Dallas or San Francisco offices, is that right?

A. There might be some small collection expenses incurred at the other branch offices.

Q. The associated offices?

2709 A. The associated offices.

Q. And that would be shown here so far as the associated offices were concerned, in addition to the Chicago item, is that right?

A. It would not be included in this figure.

Q. I see. This would represent, then, the Chicago items?

A. That is the Chicago items only.

Q. I see. Now, with respect to "Bad Debts", being a

total figure, as carried out on the exhibit, of $13,018.57; will you tell us how that figure was arrived at, Mr. Connor?

A. Those are the bad debts actually charged off at the close of the year 1939, for the Chicago office and associated offices.

Q. By "the close of the year 1939" you mean the calendar year 1939, is that correct?

A. That is correct.

Q. Is that the amount that was included for the purposes of making out the Federal Income Tax Return of Morton Salt Company?

A. Yes.

Q. Are your records such, Mr. Connor, that you were in a position to take the bad debts for the offices shown on Respondent's Exhibit No. 26 for the twelve month period, September 1, 1939 to August 31, 1940?

A. No.

2710 Q. From your familiarity with the accounts and records of the Morton Salt Company, in the amount shown, of $13,018.57, reasonably typical of the amount charged off from time to time for the offices shown on that exhibit?

A. Yes.

Trial Examiner Purcell: You mean that is a fairly constant figure? Do you mean that that figure is a fairly constant figure?

Mr. McBride: Is a representative figure.

Trial Examiner Purcell: It may be more, of course, or may be less.

By Mr. McBride:

Q. Mr. Connor, referring now to Respondent's Exhibit No. 27, that, I believe, you testified was a detailed breakdown of the items shown on Respondent's Exhibit No. 23 from the first item down through the first total, is that correct?

A. That is correct.

Q. Now, with respect to the item "Chicago Office" under "Advertising Expense", would you describe the nature of the items included in that figure?

A. That includes all advertising expense for the year which has been charged to our Chicago office advertising expense No. 4.

Q. And by "advertising expense No. 4", can you describe briefly what that would include?

2711 A. I can give you a list of the items that would go in there.

Q. All right, if you will do that, Mr. Connor.

A. May I refer to my work sheets?

Q. What work sheets do you have in mind?

A. I have an expense distribution schedule.

Q. Is that expense distribution schedule one that you use in your day to day work as auditor of Morton Salt Company, Mr. Connor?

A. Yes.

Q. And it carries, does it, the general control pattern of the advertising expense No. 4 and of other expense items or expense accounts?

A. Yes.

Q. All right, if you will, refer to that, then, and identify the items which go into advertising expense No. 4.

A. Advertising expense No. 4 covers all Morton's advertising material, and consists of items such as backgrounds, balloons, bat-o-balls, can card hangers, card hangers, counter display cards, crepe paper, dummy cartons, floor display cards, hot pads, hot pad display cards, Iodized Blotters, Lone Ranger target games, magazine display cards, pencil clips, pennants, periscopes, posters, price cards, rain prediction circulars, racks, salt and pepper sets, salt and pepper display cards, transparencies, vegetable blotters, muslin signs, road signs.

2712 Q. Now, Mr. Connor, with respect to the Chicago office items of $77,670.24, does that include the expense items for the period in question of all the types of items which you have just identified?

A. Yes.

Q. Then is the same thing true with respect to the item $128,923.19 for the branch offices?

A. Yes.

Q. And by "branch offices," are there included in there any expenses of that type from either Dallas, Kansas City or San Francisco?

A. No.

Q. Are the expenses of that type of all other branch offices or associated offices included?

A. Yes.

Q. You have deducted, on that schedule, "muslin signs" and "road signs" in the total, in the amount of $8,821.27.

Does that represent the expense in the Chicago and associated offices of the muslin signs and the road signs?

A. Yes.

Q. Now, with respect to "Salaries of Specialty Salesmen", those are the total salaries of the persons identified as Specialty Salesmen on the books and records of Morton Salt Company, is that correct?

A. Yes.

2713 Q. Are there any salaries included for specialty salesmen in either the San Francisco, Dallas or Kansas City offices?

A. No.

Q. But there are with respect to Chicago and all associated offices, is that right?

A. That is correct.

Q. Referring now to the Social Security Tax item and to the percentage 3.81 per cent, was that computed in the same manner and procedure as you testified to with respect to that same percentage for the same item on Respondent's Exhibit No. 25 and Respondent's Exhibit No. 26?

A. That is correct.

Q. With respect to "Expenses of Specialty Salesmen"—here referring to Respondent's Exhibit No. 27—do those represent the expenses of the same salesmen whose salaries were included in that exhibit under the heading "Salaries of Specialty Salesmen"?

A. Yes.

Q. And what type of expense would be included there, Mr. Connor?

A. The travelling expense.

Q. The travelling expense of those salesmen?

A. Of those salesmen.

Q. So that there are no specialty salesmen ex-

2714 penses included for either Kansas City, Dallas or San Francisco?

A. No.

Q. But there is included there the expense item in question for Chicago and associated offices?

A. That is right.

Mr. McBride: You may cross-examine.

Trial Examiner Purcell: Do you want to take a five minute recess?

Mr. Haslett: Yes.

(A short recess was taken.)

Trial Examiner Purcell: On the record.

Mr. McBride: Mr. Examiner, with your permission, may I recall Mr. Connor for one final question prior to releasing him for cross-examination?

Trial Examiner Purcell: Proceed.

By Mr. McBride:

Q. Are you a certified public accountant, Mr. Connor?

A. No.

Q. Do you have any qualifications comparable to that, that you could testify to?

A. I am a chartered accountant.

Q. What do you mean by chartered accountant?

A. A member of the Institute of Chartered Accountants in Ireland.

Q. And you were such before coming into this 2715 country, is that correct?

A. That is correct.

Q. And since being employed by the Morton Salt Company, you have at all times been either in the accounting department of that company or as its assistant or finally as general auditor, is that correct?

A. That is correct.

Mr. McBride: I now release Mr. Connor for cross-examination.